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OCTOBER TERM, 1952

No. 43

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SUPREME COURT, U. S.

MONTGOMERY BUILDING & CONSTRUCTION
TRADES COUNCIL, ET, AL., PETITIONERS,

vs.

LEDBETTER ERECTION COMPANY, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF ALABAMA

PETITION FOR CERTIORARI FILED APRIL 25, 1952
CERTIORARI GRANTED JUNE 2, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No.

MONTGOMERY BUILDING & CONSTRUCTION
TRADES COUNCIL, ET AL., PETITIONERS,

vs.

LEDBETTER ERECTION COMPANY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

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[fol. a]

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA**

**LEDBETTER ERECTION COMPANY, INC., Complainant,
vs.**

**MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL,
ET ALS., Respondents**

CERTIFICATE OF APPEAL—January 12, 1951

I, Geo. H. Jones, Jr., as Register of the Circuit Court of Montgomery County, Alabama, In Equity, do hereby certify that an appeal was taken to the Supreme Court of the State of Alabama in the above stated cause on the 10th day of January, 1951, by the Respondents: Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union, Local #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith, and Monroe Henderson, from a decree rendered on the 21st day of December, 1950, and that said appeal is made returnable to the second Monday in March, 1951.

I further certify that Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union, Local #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith and Monroe Henderson, are principals, and Employers' Liability Assurance Corporation, Ltd., is surety, for the costs of said appeal.

Given under my hand and seal of office, this the 12th day of January, 1951.

(S.) Geo. H. Jones, Jr., As Register of the Circuit
Court of Montgomery County, Alabama, In Equity.
(Seal.)

[fol. 1] **IN CIRCUIT COURT OF MONTGOMERY COUNTY**

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, Alabama, In Equity, at which the officers authorized

by law to hold or serve such Court, were serving, the following proceedings were had in the cause styled:

LEDBETTER ERECTION COMPANY

VS.

MONTGOMERY BUILDING & CONSTRUCTION TRADES COUNCIL,
ET ALS.

[fol. 2] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
ALABAMA, IN EQUITY

[Title omitted]

BILL OF COMPLAINT—Filed October 20, 1950

To the Honorable Walter B. Jones and Eugene W. Carter,
Judges of the Circuit Court of Montgomery County, Ala-
bama, Sitting In Equity:

Now comes Ledbetter Erection Company, Inc., and re-
spectfully shows unto the Court as follows:

1. That it is a corporation organized and existing under the laws of the State of Alabama and having its principal place of business in Birmingham, Alabama; that Montgomery Building and Construction Trades Council is an unincorporated association of representatives of various builders trades unions within the City of Montgomery and surrounding territory; that J. H. McNeese is over the age of twenty-one and a resident of the City and County of Montgomery and is president of the Montgomery Building and Construction Trades Council; that the International Brotherhood of Electrical Workers Union, Local No. 443 is an unincorporated association; that Carpenters and Joiners Local Union #1796 is an unincorporated association having its principal place of business in the City and County of Montgomery, Alabama; that Ross Smith and Monroe Henderson are each over the age of twenty-one and residents of the City and County of Montgomery; that John Doe whose name to complainant is otherwise unknown is over the age

of twenty-one and a resident of the City and County of Montgomery.

2. Complainant avers that it is engaged in the business of the erection of structural steel; that complainant has for more than ten years past operated what is known as a union shop under a contract with the International Association of Bridge Structural and Ornamental Iron Workers under the terms of which said contract complainant agrees to employ no employees except members of said union and not to sublet any work to any party who employs other than union labor; that complainant has a similar union shop contract with the International Union Operating Engineers.

3. Complainant avers that sometime shortly prior to June 1, 1950, Montgomery Towers, Inc., was formed as a corporation [fol. 3] for the purpose of erecting a multi-story apartment house on a lot on the corner of Court and Clayton Streets in the City of Montgomery, Alabama, and said Montgomery Towers, Inc., entered into a contract with Bear Brothers, Inc., an Alabama corporation, as general contractors under the terms of which said contract Bear Brothers, Inc., agreed to erect said apartment house in accordance with plans and specifications. That on June 1, 1950, complainant entered into a contract with said Bear Brothers, Inc., under the terms of which complainant agreed to erect and rivet all of the structural steel necessary for the erection of said apartment house; that said apartment house being some ten stories in height with steel frame requires the erection of heavy steel girders and columns; that in the performance of said work complainant had and still has seventeen persons employed consisting of fourteen iron workers, 2 foremen and one operating engineer operating the crane necessary for the erection of such steel.

4. Complainant is informed and believes and on such information and belief avers that the employees of Bear Brothers, Inc., are not organized as union labor; that no labor organization has been certified as the representatives of the employees of Bear Brothers, Inc., under the terms of the National Labor Relations Act or the Labor Management Relations Act, commonly known as the Taft-Hartley Act; that there is no existing labor dispute between Bear Brothers, Inc., and its employees and there is no existing labor dispute between the complainant and any of its em-

employees or the duly certified bargaining agent of such employees.

5. Complainant avers that the International Union of Operating Engineers and the International Association of Bridge Structural and Ornamental Iron Workers are the duly accredited collective bargaining agent for the employees of the complainant and that none of the respondents are the accredited collective bargaining agent of the employees of the complainant and said respondent unions and Montgomery Building Trades Council do not represent the employees of complainant.

6. That the International Brotherhood of Electrical Workers Union, Local #443, the Carpenters and Joiners Local Union #1796 and the Montgomery Building and Construction Trades Council do, not represent employees of Bear Brothers, Inc.

7. The respondents do not seek to represent the complainant's employees and do not seek employment by the complainant for any member of the respondent unions or others and said respondents do not seek to alter or affect the terms or conditions of employment of complainant's [fol. 4] employees.

8. Complainant's employees and the unions which represent them are satisfied with the contract existing between them and complainant, and complainant is not involved in any labor dispute with its employees or with the International Association of Bridge Structural and Ornamental Iron Workers or the International Union of Operating Engineers.

9. That the Respondents Montgomery Building and Construction Trades Council acting through the respondent J. H. McNeese, its President, and acting in concert with the International Brotherhood of Electrical Workers Union, Local #443, and the Carpenters and Joiners Local Union #1796 are seeking to force or require Bear Brothers, Inc. to recognize or bargain with a labor organization as the representative of employees of Bear Brothers, Inc., which said labor organization has not been certified as a representative of such employees as required by the National Labor Relations Act as amended by the Labor Management Relations Act; that to that end, the respondent Montgomery Building and Construction Trades Council and the respond-

ent International Brotherhood of Electrical Workers Union have placed a picket line at or across the entrances to the property upon which such building is being constructed and the respondents Ross Smith, Monroe Henderson, and John Doe are actively engaged in picketing said property.

10. That the union employees of the complainant are not willing to cross said picket line to perform work on said building; that representatives of the collective bargaining agent of complainant's employees, to-wit, the International Association of Bridge Structural and Ornamental Iron Workers attempted to get the respondents to remove said picket line so that complainant's employees could continue to work on said job but the respondents failed or refused to remove the same.

11. That the action of said respondents is a violation of Section 8B(4) of the National Labor Relations Act as amended and amounts to secondary picketing as therein defined and prohibited; that said action of the respondents induces or encourages the employees of this complainant to engage in a concerted refusal to perform services for the object of forcing or requiring another employer to recognize or bargain with the labor organization as the representative of Bear Brothers, Inc., employees, where such labor organization has not been certified as a representative of such employees and to force or to require complainant Ledbetter Erection Company, Inc., to cease doing business with Bear [fol. 5] Brothers, Inc.

12. That since the establishment of said picket line by the respondents none of the employees of the complainant Ledbetter Erection Company, Inc., will cross said picket line and the erection of said structural steel has been stopped; that if said picket line is maintained complainant will suffer irreparable damage for which it will have no adequate remedy at law; that the remedy of an action and damages provided by Section 303 of the Taft-Hartley Act (29 U. S. C. A., Section 187) is inadequate; that the complainant's valuable heavy machinery is being kept idle at complete loss to the complainant and complainant has been notified by its employees that if they are prevented from working on this job by reason of said picket line they will be forced to seek employment elsewhere; that in order to keep complainant's experienced crew of workmen together

it would be necessary for the complainant to pay said employees even though they remained idle for an indeterminate time at a resulting loss to the complainant for which no adequate damages could be assessed or collected; that complainant's employees have notified complainant that unless said picket line is removed on November 20, they will seek employment elsewhere; that in addition thereto it might become necessary for complainant to default in its contract with Bear Brothers, Inc., as a result of which complainant would be subjected to suits for damages for such breach.

13. That said apartment building is being erected under the terms of Section 608 of the National Housing Act under a commitment issued by the Federal Housing Authority certifying that such housing was essential and that there existed in Montgomery a shortage of adequate housing units for rental purposes; that since the erection of said building was begun defense activities at Gunter Field and Maxwell Field have substantially increased; that complainant is informed and believes and on such information and belief avers that the commanding officer of Maxwell Air Force Base, Montgomery, Alabama, has stated publicly that after January 1, 1951, that defense activities at Maxwell Air Force Base will be stepped up to such an extent that said Air Force Base will have a larger personnel than ever before in its history; and before such defense activities were initiated the Chamber of Commerce was asked to ascertain whether the City of Montgomery could absorb 500 additional families and in making said survey the Chamber of Commerce took into consideration the availability of this apartment house under erection which would [fol. 6] supply 124 additional rental units; that if the erection of said apartment house is delayed such rental units will not be available for the use of the members of the armed forces or other defense activities in and around Montgomery and the public interest will be inimically affected.

14. That complainant and its employees are entirely innocent parties and are in no way engaged in any labor dispute among themselves or with anyone else. That complainant's employees are unwilling to cross said picket

line for the reason that if they cross said picket line they might be blackballed and prevented from working on further jobs; that the effect of the continued maintenance of such picket line is therefore to prevent complainant from engaging in business and performing its said contract and also prevents the complainant's employees from engaging in gainful employment in Montgomery to the irreparable injury to both the complainant and its employees.

15. Complainant alleges that there is no connection between complainant and Bear Brothers, Inc., other than the contract under which complainant agreed to erect said structural steel; that there is no connection between complainant and the employees of Bear Brothers, Inc., and complainant has no right to hire or fire or establish hours and working conditions for the employees of Bear Brothers, Inc., and has no control over such employees of Bear Brothers, Inc., that complainant cannot force the employees of Bear Brothers, Inc., to join any union represented by the respondents and cannot force Bear Brothers, Inc., to negotiate with or recognize the respondents or any of them as the accredited or recognized bargaining agent of the employees of Bear Brothers, Inc.; that the respondents well knew of complainant's union shop contract with the duly accredited bargaining representative of complainant's employees and further knew that the complainant's employees would refuse to cross a picket line; that the action of respondent's in unlawfully establishing and maintaining said picket line impairs the contract between the complainant and the International Association of Bridge Structural and Ornamental Iron Workers; that such action of the respondents amounts to an unlawful interference with the complainant's business and its right to perform its said contract with Bear Brothers, Inc.; that such action of the respondents is a combination, conspiracy or arrangement for the purpose of hindering, delaying or preventing complainant from carrying on a lawful business which is in violation of [fol. 7] Section 54, Title 14 of the Code of Alabama of 1940; that such action of the respondents in establishing and maintaining said picket line in violation of the labor management relations act is a violation of Title 14, Section 57 and constitutes the use of unlawful means to prevent the

complainant from engaging in a lawful occupation or business; that such action of the respondents is a violation of the property rights of complainant and unlawfully interferes with the rights of complainant's employees to labor and engage in work of their own choosing.

Premises considered complainant makes said Montgomery Building and Construction Trades Council, J. H. McNeese, International Brotherhood of Electrical Workers Union Local #443, Carpenters and Joiners Union Local #1796, Ross Smith, Monroe Henderson and John Doe parties respondent to this bill of complaint and prays that process issue to them requiring them to plead, answer or demur to this bill of complaint within the time and manner required by law and the rules of this Honorable Court.

Complainant prays that pending a hearing hereof the Court will make and issue a writ of injunction, enjoining said respondents, their agents, servants or employees and all persons acting in concert with them from

(a) Maintaining any picket line at the entrances of said property on the corner of Court and Clayton Streets in the City of Montgomery;

(b) Engaging in any unfair labor practice as defined by the Labor Management Relations Act;

(c) Performing any act seeking to induce or encourage employees of complainant to engage in a concerted refusal to perform any services for the purpose of forcing or requiring Bear Brothers, Inc., to recognize or bargain with a labor organization as a representative of its employees unless such labor organization has been certified as the representative of such employees;

(d) Performing any act seeking to induce or encourage the employees of complainant to engage in a concerted refusal to perform any services with the object of forcing complainant to cease doing business with Bear Brothers, Inc.

[fol. 8] (e) Picketing in any manner said construction job at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama.

(f) Taking any steps seeking to induce complainant's employees not to work or hindering or interfering with said

employees of complainant or seeking in any way to disrupt the normal and ordinary operations of complainant's business or from unlawfully infringing upon the personal or property rights of complainant or its employees while engaging or seeking to engage in their duties in connection with complainant's business.

And Complainant prays that upon a final hearing hereof the Court will make and enter a decree making said temporary injunction permanent. Complainant further prays that upon a final hearing hereof the Court will make and enter a decree ascertaining and determining the damages sustained by the complainant in its business by reason of such unlawful picketing in violation of Section 303 of the Labor Management Relations Act and will render Judgment in favor of the complainant against said respondents for complainant's said damages.

And if mistaken in the relief above prayed complainant prays for such other further and general relief as to which in equity and good conscience it may be entitled.

(S.) M. L. Gwaltney, Files Crenshaw, Jack Crenshaw, Attorneys for Complainant.

Duly sworn to by S. M. Walker. Jurat omitted in printing.

[fol. 9]

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

JUDGE'S FIAT—November 20, 1950

Upon consideration of the within sworn bill of complaint, it is ordered adjudged and decreed by the Court that the Temporary Writ of Injunction issue as prayed for upon complainant entering into bond in the sum of \$500.00 conditioned and payable as required by law and to be approved by the Register.

Done this Nov. 20, 1950.

(S.) Walter B. Jones, Circuit Judge.

IN CIRCUIT COURT OF MONTGOMERY COUNTY

WRIT OF INJUNCTION—November 20, 1950

THE STATE OF ALABAMA,
Montgomery County:

To *Montgomery Building and Construction Trades Council, J. H. McNeese, International Brotherhood of Electrical Workers Union Local #443, Carpenters and Joiners Union Local 1796. Ross Smith, Monroe Henderson and John Doe*

Whereas, one *Ledbetter Erection Company, Inc.*, has exhibited his bill of complaint in equity, in the Circuit Court of Montgomery County, and has obtained from the Honorable *Walter B. Jones* an order for the issuance of an Injunction to enjoin you as hereinafter mentioned; and whereas, the said *Ledbetter Erection Company, Inc.* has, in accordance with said order, entered into bond, with security, in the sum of Five Hundred and no/100 (\$500.00) Dollars payable to said respondents and approved by the Register of said Court, and conditioned according to law.

Now, Therefore, you, the said *Montgomery Building and Construction Trades Council, J. H. McNeese, International Brotherhood of Electrical Workers Union Local #443, Carpenters and Joiners Union Local #1796, Ross Smith, Monroe Henderson and John Doe*, are hereby enjoined [fol. 10] from

(a) Maintaining any picket line at the entrances to said property on the corner of Court and Clayton Streets in the City of Montgomery;

(b) Engaging in any unfair labor practices as defined by the Labor Management Relations Act;

(c) Performing any act seeking to induce or encourage employees of complainant to engage in a concerted refusal to perform any services for the purpose of forcing or requiring *Bear Brothers, Inc.*, to recognize or bargain with a labor organization as a representative of its employees unless such labor organization has been certified as the representatives of such employees;

(d) Performing any act seeking to induce or encourage the employees of complainant to engage in a concerted refusal to perform any services with the object of forcing complainant to cease doing business with Bear Brothers, Inc.

(e) Picketing in any manner said construction job at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama.

(f) Taking any steps seeking to induce complainant's employees not to work or hindering or interfering with said employees of complainant or seeking in any way to disrupt the normal and ordinary operations of complainant's business or from unlawfully infringing upon the personal or property rights of complainant or its employees while engaging or seeking to engage in their duties in connection with complainant's business;

And this Injunction you are required to obey under the penalties of the law, until the further order of this Court.

Witness my hand, this 20th day of November, 1950.

(S.) Geo. H. Jones, Jr., Register.

[fol. 11] To the Sheriff of Montgomery County:

You are hereby commanded to execute this writ, and return the same with your endorsement thereon, to this Court, with all convenient speed.

Witness my hand, this 20 day of November, 1950.

(S.) Geo. H. Jones, Jr., Register.

Executed by serving copy of the within—November 21, 1950. J. H. McNeese—Montgomery Building Trades, J. E. Garner—Electrical Workers, Ross Smith, Monroe Henderson—Charlie Wilson—Carpenters and Joiners Union—John Doe (Not Found)—

(S.) G. A. Mosley, Sheriff, Montgomery County;

(S.) Mitchell & Mathis, Deputy Sheriffs.

[fols. 12-13] Injunction Bond for \$500.00 approved and filed Nov. 20 1950 omitted in printing.

[fol. 14] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
ALABAMA, IN EQUITY

[Title omitted]

MOTION TO DISSOLVE INJUNCTION

To the Hon. Walter B. Jones, Judge of the Circuit Court of Montgomery County, Alabama, In Equity Sitting:

Come the respondents, separately and severally, and move to dissolve the injunction in this cause as a whole and dismiss the bill of complaint as a whole and further, separately and severally, move to dissolve said injunction and dismiss the bill as to the following, separate and several, parts thereof, to-wit:

A. That part thereof enjoining respondents from maintaining any picket line at the entrances to said property on the corner of Court and Clayton Streets in the City of Montgomery;

B. That part thereof enjoining respondents from engaging in any unfair labor practice as defined by the Labor-Management Relations Act;

C. That part thereof enjoining respondents from performing any act seeking to induce or encourage employees of complainant to engage in a concerted refusal to perform any services for the purpose of forcing or requiring Bear Brothers, Inc., to recognize or bargain with a labor organization as a representative of its employees unless such labor organization has been certified as the representative of such employees;

D. That part thereof enjoining respondents from performing any act seeking to induce or encourage the employees of complainant to engage in a concerted refusal to perform any service with the object of forcing complainant to cease doing business with Bear Brothers, Inc.;

[fol. 15] E. That part thereof enjoining respondents from picketing in any manner said construction job at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama;

F. That part thereof enjoining respondents from taking steps seeking to induce complainant's employees not to

work or hindering or interfering with said employees of complainant or seeking in any way to disrupt the normal and ordinary operations of complainant's business or from unlawfully infringing upon the personal or property rights of complainant or its employees while engaging or seeking to engage in their duties in connection with complainant's business;

And for grounds of said motion to the said injunction as a whole and to each of the separate and several parts thereof above described, the said respondents, separately and severally, assign as grounds of said motion the following, separately and severally:

1. There is no equity in the bill.
2. There is no equity in said bill for that the remedy at law is full, complete and adequate, if complainant is entitled to any relief in any Court.
3. The acts and things complained of are not illegal under the laws of the State of Alabama.
4. Said bill is not in good faith, but for the purpose of aiding and abetting the Bear Construction Company in their efforts to defeat respondent's organization program.
5. Respondents have violated no legal right of complainant entitling it either to an injunction or an award of damages.
6. For that the same violates the public policy of the United States.
7. It does not appear that any acts done by respondents were done with an intent to injure complainant.
8. The picketing complained of is a primary picket aimed solely at the primary employer.
9. Respondents are entitled to have said injunction dissolved on the averments of the sworn answer.
10. The picketing does not constitute a secondary boycott.
11. Court of Equity is without jurisdiction to enjoin picketing for the purpose of organizing workers.
- [Vol. 16] 12. Said bill is not in good faith, but for the purpose of aiding and abetting Bear Brothers, Inc., in their effort to destroy the Unions.
13. Respondents have violated no legal right of complainant entitling it either to an injunction or an award of damages.

14. For that the same violates the Constitution of the United States.

15. For that the same violates the Thirteenth Amendment of the Constitution of the United States.

16. For that the same violates the Fourteenth Amendment of the Constitution of the United States.

17. For that the same denies freedom of press and freedom of speech.

18. For that the same denied the right of peaceful assembly.

19. For that the same violates the public policy of the United States.

20. Said injunction is excessive.

21. The said injunction is not confined to illegal picketing.

22. Said injunction is a blanket injunction banning all picketing.

23. Said injunction bans peaceful, lawful picketing.

24. The same is contrary to the Laws of the State of Alabama.

25. The same is contrary to the Constitution of the State of Alabama.

26. The same is contrary to the public policy of the State of Alabama.

27. If the act complained of in the complaint is a violation of section 8 (b) of the National Labor Relations Act, the complainant has an adequate remedy as provided in Section 10 (a) of the said Act.

[fol. 17] IN CIRCUIT COURT OF MONTGOMERY COUNTY

ANSWER

Come the respondents, separately and severally, without waiving the motion to dissolve but insisting upon the same and, separately and severally, file the following answer to said bill of complaint, answering each paragraph thereof, separately and severally.

1. Respondents do not know whether or not the complainant is a corporation, organized and existing under the Laws of the State of Alabama, neither do respondents know

whether its principal place of business is in Birmingham, Alabama, or not;

Respondents admit that Montgomery Building & Construction Trades Council is an unincorporated association of representatives of various building trade unions within the City of Montgomery and surrounding territory; and that J. H. McNeese is over the age of 21 and a resident of the City and County of Montgomery, Alabama, but respondents specifically deny that he is the President of the Montgomery Building & Construction Trades Council; respondents admit that the International Brotherhood of Electrical Workers Union, Local #443, is an unincorporated association; that Carpenters and Joiners Local Union #1796, is an unincorporated association and has its place of business in the City of Montgomery, Alabama; that Ross Smith and Monroe Henderson are each over the age of 21 and residents of the City and County of Montgomery.

2. Respondents do not know anything about the business of the complainant or whether he is under contract with Structural Iron Workers or what his agreement is with his employees, all of said paragraph being of matters best known to the complainant himself. Respondents neither admit nor deny allegations but demand strict proof thereof.

3. Respondents do not know anything about the business of Montgomery Towers, Inc., or when it was formed nor whether it entered into a contract with Bear Brothers, Inc., for the purpose of erecting an apartment house, neither do respondents know whether complainant entered into a contract with said Bear Brothers, Inc., to erect the structural steel necessary for the erection of said apartment house. Respondents do know that Bear Brothers, Inc., has charge of and is erecting an apartment house at the corner of Court and Clayton Streets in the City and County of Montgomery, [fol. 18] Alabama, and that complainant is engaged in erecting the structural steel for said building;

Respondents are not informed as to the other averments of this paragraph and can neither admit nor deny the same.

4. Respondents admit that the employees of Bear Brothers, Inc., are not members of a labor union affiliated with the Montgomery Building & Construction Trades Council and that no labor organization has been certified as the representative of said employees under the terms of the National

Labor Relations Act or Labor-Management Relations Act, commonly known as the Taft-Hartley Act. In fact, the National Labor Relations Board under these acts would have no jurisdiction over said employees.

5. Respondents do not know whether or not International Union of Operating Engineers and the International Association of Bridge, Structural, Ornamental Iron Workers, are the accredited bargaining agents for the employees of the complainant, but respondents admit they are not, if this be material, which they deny; they do allege, however, that the Building Trades Council of Montgomery does have jurisdiction over all union building trades engaged in the building of buildings within the jurisdiction of Montgomery Building Trades Council, that is within Montgomery County, and does act as the collective bargaining agent for all trades affiliated with the present trades council in that county.

6. Respondents say the International Brotherhood of Electrical Workers Union #443, Carpenters and Joiners Local Union #1796, have no members presently engaged as employees of Bear Brothers, Inc., but that the Montgomery Building & Construction Trades Council does represent any union employees engaged in the erection of buildings in Montgomery whether they are working for Bear Brothers, Inc., or someone else.

7. Respondents admit that they do not seek to represent the complainant's employees or to alter or affect the terms or conditions of employment of complainant's employees but do say that building trades unions, while engaged in working within the jurisdiction of the Montgomery Building Trades Council are required to submit to its rules and regulations.

[fol. 19] 8. Respondents say that as far as they know paragraph 8 is true and correct.

9. Respondents say that J. H. McNeese is not the President of the Building & Construction Trades Council, but do admit that the Building & Trades Council through its affiliated memberships which include the Electrical Workers and Carpenters and Joiners did place a picket at the entrance to the apartment building now being erected at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama, and admit that they have not been

certified as representatives of such employees and that not being engaged in interstate commerce they are not required so to do by the National Labor Relations Act as amended.

10. Respondents specifically deny the allegations of paragraph 10 and say that the picket sign which was carried by the picket stated that Bear Brothers, Inc., was unfair to the Montgomery Building Trades Council. They further say that the employees of complainant continued to work during the time the picket was there up to the day the injunction was issued and the picket was removed on account of the injunction. They also aver that the employees of complainant never asked the respondents to remove the picket line.

11. Respondents specifically deny that the act of maintaining a picket line at this particular building was a violation of Section 8 B (4) of the National Labor Relations Act as amended; further, that the erection of the building is entirely an intrastate job and the National Labor Relations Board would have no jurisdiction over the operation of said job.

12. Respondents deny the allegations in this paragraph and further say that the employees of the complainant did cross the picket line and continued with their work during the time the picket was in existence and respondents deny that the complainant's valuable and heavy machinery was kept in idleness due to any picket line placed on job by the respondents. Respondents have no way of knowing whether the allegations are true or false as to any statements not being made in the presence of respondents, but respondents say such allegations are irrelevant and immaterial to the issues in this case.

[fol. 20] 13. Respondents do not know anything about the arrangements made to raise finances for the building of said apartment house neither do respondents know about the activities of the Chamber of Commerce, nor whether or not there will be any increase in the personnel of officers and men at Maxwell Air Force Base in the near future or whether if so, any of them would want to live in said apartment house if same was finished and ready for occupancy; respondent's further say that paragraph 13 is merely the expression of an opinion and an argument by the complainant which does not need an answer, because irrelevant and immaterial to the issues in this case.

14. Respondents admit that complainant and its employees are third parties as far as the dispute between the Building Construction & Trades Council and Bear Brothers, Inc., are concerned, but deny that complainant is an entirely innocent party and also deny that complainant's employees are unwilling to cross said picket line and say that said employees have on many occasions crossed the said picket line and worked on the job.

15. Respondents understand and believe that complainant is subcontracting the erection of the structural steel on said job from Bear Brothers, Inc., but as to any connection between the complainant and the employees of Bear Brothers, Inc., respondents have no way of knowing anything about same and do not know whether the complainant has the right to hire or fire or establish hours and working conditions for the employees of Bear Brothers, Inc., nor do respondents know anything about what control, if any, the complainant has over the employees of Bear Brothers, Inc. Respondents admit that they were of the opinion that complainant had a union shop contract with complainant's employees, but not knowing the wording of the contract did not know or had no way of knowing whether or not the employees would refuse to cross a picket line. Respondents deny that they have committed any unlawful act in establishing the said picket line and deny that they have in any way interfered with the complainant's business and its right to perform its said contract with Bear Brothers, Inc., and that [fol. 21] in establishing the picket line expressing the fact that Bear Brothers, Inc., was unfair to organized labor was a perfectly legal act and even if it were shown that complainant's employees had refused to cross the picket lines the complainant, being a third party, would not be in a position to complain about a fight between the Building & Construction Trades Council and Bear Brothers, Inc.

(S.) J. H. McNeese, B. A.; (S.) Chas. Wilson, Carp. Local 1796; (S.) J. Earl Garner, L. U. 443 I. B. of E. W.; Montgomery Building & Construction Trades Council, By J. Earl Garner, Its Secretary. ✓

Duly sworn to by J. H. McNeese, et al. Jurat omitted in printing.

To Ledbetter Erection Company, Inc., or to Crenshaw & Crenshaw, Solicitors of Record:

Take notice that the above and foregoing motion to dissolve injunction is set and will be called for hearing before the Hon. Walter B. Jones, Circuit Judge, in his Court Room, on the — day of —, 19—, at — A. M. or P. M.

—, —, Solicitors for Respondents.

The undersigned of solicitors for respondents hereby certify that a copy of the above and foregoing motion, together with the above notice of the time of the setting of the hearing, was served upon —, on the — day of —, 19—, at — M.

—, Of Solicitors for respondents.

[fol. 22] IN CIRCUIT COURT OF MONTGOMERY COUNTY :

~~DECREE SETTING CAUSE~~—December 5, 1950

Upon consideration of the within motion same is set down for hearing before the Court at 12 o'clock noon Wednesday, December 13, 1950. Let notice issue accordingly.

Done this Dec. 5, 1950.

(S.) Walter B. Jones, Circuit Judge.

Filed in Office Dec. 4, 1950. Geo. H. Jones, Jr., Register.

IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

AMENDMENT TO MOTION TO DISSOLVE—Filed December 18, 1950

Come the respondents, separately and severally, and amend their motion to dissolve heretofore filed in this cause as follows:

By striking each and every ground of said motion heretofore filed, 1 through 26, both inclusive.

II

By adding the following grounds of said motion, separately and severally:

28. This court is without jurisdiction to issue said injunction.

29. The State Court is without jurisdiction to issue said injunction.

30. The sole and exclusive remedy provided for the acts complained of in the complaint is Section 10 (a) of the National Labor Relations Act, as amended.

31. The State Court is without jurisdiction of the acts complained of in the complaint.

[fol. 23] 32. The sole and exclusive remedy of the complainant is a proceeding to establish an unfair labor practice, which said proceeding must be conducted before the National Labor Relations Board and the Courts are without jurisdiction unless and until such proceedings are had before the said National Labor Relations Board.

33. Said act provides that a Cease and Desist Order must be obtained from the National Labor Relations Board before a proceeding for an injunction may be had in any Court and it appears upon the face of the Bill of Complaint in this cause that no such proceeding has been had.

34. Remedy by injunction on account of the acts complained of in the complaint is vested exclusively in the National Labor Relations Board.

35. The Congress of the United States, having enacted legislation regulating the rights of employer and employee, when the business of the former is in inter-state commerce, such legislation is exclusive of the right of the state through its courts or its legislature to proceed to regulate the said rights of employer and employee.

36. The Congress of the United States, having enacted legislation regulating the rights of employer and employee, when the business of the former is in inter-state commerce, and having specified the terms and conditions upon which an injunction may be obtained, such legislation is exclusive of the right of the state through its courts or its legislature to proceed to regulate the said rights of employer and employee and to issue an injunction in connection therewith.

37. This Court is without jurisdiction over the subject matter of this case.

38. Only the National Labor Relations Board is authorized to apply for an injunction on account of the acts complained of in this case.

39. This Court is without jurisdiction to issue said injunction on the application of a private person or corporation.

(S.) J. L. Busby, Earl McBee, Solicitors for Respondents.

[File endorsement omitted.]

[fol. 24] AFFIDAVIT OF FRED C. BEAR

STATE OF ALABAMA

Montgomery County

Before me, Catherine G. Cole, a Notary Public in and for said county and State, personally appeared Fred C. Bear, known to me, who being by me first duly sworn, deposes and saith:

That he is Vice President of Bear Brothers, Inc.; and he is familiar with the Bill of Complaint filed in the case of Ledbetter Erection Company, Inc., vs. Montgomery Building and Construction Trades Council and with the answer of Respondents thereto and has read the affidavits proposed to be filed by the attorney for the Respondents. That he, as the Vice-President of Bear Brothers, Inc., is familiar with the facts attending the erection of the apartment building for Montgomery Towers.

Bear Brothers, Inc., has no labor dispute with its employees and has no labor dispute with either the Montgomery Building and Construction Trades Council, the International Brotherhood of Electrical Workers Union, Local #443, or the Carpenters and Joiners Local Union #1796; that none of said Unions are the duly accredited bargaining agent for the employees of Bear Brothers, Inc., and that Bear Brothers, Inc., is willing to negotiate with any labor union which is duly certified as the collective bar-

gaining agent of its employees or any union of its employees; that affiant understands that it is unlawful and improper for him or any of the management of Bear Brothers, Inc., to coerce any of its employees or any of them either to prevent their joining a union or to force them to join a union and this is the position consistently maintained by Bear Brothers, Inc.; and Bear Brothers, Inc., does not know which if any of its employees are members of a union and have never made any effort to ascertain such facts.

Affiant further states that the wage scale for the erection of this apartment building was set by the United States Department of Labor and approved by them prior to or simultaneously with the issuance of a commitment from the Federal Housing Authority for an insured loan on said project; that this is a firm requirement of the Federal Housing Authority and the wage scale is set by the Department of Labor at a scale in line with prevailing wage scale rates.

Affiant further states that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a [fol. 25] large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio; plaster from Georgia, Virginia, and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce.

Affiant saw the signs used in the picket lines and the affidavit of J. H. McNeese sets out accurately the working on these signs. At no time was the name of Bear Brothers,

Inc., used on the signs in the picket line; that many of the employers working on said project employ solely union labor and it would be impossible for the average layman to know to whom the sign referred, whether it referred to Ledbetter Erection Company, to the plumbing contractor, the electrical contractor, or other of the numerous contractors on said project, all of whose names were shown on a clearly visible sign at the project site.

It is Affiant's understanding that when the first picket began patrolling before the entrance of said project, the steel workers did not consider it a picket line, but when the second picket began patrolling, the steel workers called on the business agent of their Union, Mr. A. C. Bonner of Birmingham, who came to Montgomery to investigate the situation and see whether the steel workers were justified in crossing said picket line.

Affiant further states that the construction of Montgomery Towers, Inc., was begun about June 1st. Numerous sub-contracts were let for work on said job. No effort was made by Bear Brothers, Inc., to prevent the use of union labor on said project and in fact seven of the contracts for said erection were given to people employing only union labor. No effort was made to start any picket line on said project until about November 1st or some five (5) months after construction had begun and after other sub-contractors employing only union labor had had men employed on the job which men were union labor. That at the time said picket line was begun Bear Brothers, Inc., had sub-contracted all of the work which was going to be sub-[fol. 26] contracted and had no control over whether sub-contractors employed union or non-union labor.

Affiant states that Mr. A. C. Bonner called the St. Louis Office of the International Association of Bridge Structural and Ornamental Iron Workers, to which said employees belonged and was advised that they had no knowledge of the picket line and it was evidently a wild cat strike, which the steel workers would be justified in disregarding. Thereafter, a representative of the U. S. Mediation and Conciliation Service appeared on the scene from Birmingham and discussed the matter with the officials of Bear Brothers,

Inc., and informed them that he was called to Montgomery by the Montgomery Building and Construction Trades Council but also advised them that his office had no jurisdiction since there was no dispute between Bear Brothers, Inc., and its employees; that thereafter on or about Friday, November 17th, Bear Brothers, Inc., was notified by the employees of Ledbetter Erection Company that the steel workers on said job would recognize said picket line and would not return to work as long as said picket line existed, and said employees had further stated that unless the picket line was removed promptly they would seek work elsewhere. That Bear Brothers have a firm contract with Ledbetter Erection Company, under the terms of which, Ledbetter Erection Company is required to erect all of the structural steel and bar joists on said project, along with all riveting and welding, and Bear Brothers, Inc., informed Ledbetter Construction Company of these circumstances and that Bear Brothers would expect Ledbetter Erection Company to complete their contract in accordance with its terms. That on the morning of Monday, November 20th, none of the employees of Ledbetter Erection Company, Inc., appeared at work, and the Vice President of Ledbetter Erection Company, Mr. S. M. Walker, came to Montgomery, with his attorney to see what, if anything, could be done to remove said picket line; that actually the employees of Ledbetter Erection Company did not return to work until Wednesday, November 22nd and at that time only eight of the seventeen who had been employed the previous Friday, returned to work on said job.

Affiant has read the affidavit of J. H. McNeese in which he states that he is not the President of the Montgomery Building and Construction Trades Council, but on or about November 7th Affiant met said John McNeese at the job site, at which time there were present Carl Bear, Mr. Walker, Vice-President of Ledbetter Construction Company, Mr. Fred McDonald, Superintendent for Ledbetter Erection Company, and B. C. Brown, Superintendent for [fol. 27] Bear Brothers, Inc., at which time Mr. McNeese stated that he was President of the Montgomery Building and Construction Trades Council and the subject of said picket line and whether the steel workers should recognize

said picket line were discussed with him, as President of the Montgomery Building and Construction Trades Council.
(S.) Fred C. Bear.

Sworn to and subscribed before me this 12th day of December, 1950. (S.) Ruth Anne O'Connor,
Notary Public.

I hereby certify that I have this -- day of December, 1950 served a copy of the foregoing affidavit on -- --, attorney for respondents.

--- --, of Counsel for Complainant.

Filed in office 18th day of Dec. 1950: Geo. H. Jones, Jr., Register.

AFFIDAVIT OF FRED H. McDONALD

STATE OF ALABAMA

Montgomery County

Before me, Marie H. Collins, a Notary Public in and for said County, in said State, personally appeared Fred H. McDonald, who, being by me first duly sworn, deposes and says:

That I am erection superintendent for Ledbetter Erection Company on the construction job at Montgomery Towers at the Corner of Court and Clayton Streets in the City of Montgomery, Alabama; that I have been with Ledbetter Erection Company for eight years in this capacity. We began the erection of the structural steel at Montgomery Towers building site at said corner of Court and Clayton Streets in the City of Montgomery, about October 23, 1950. On Wednesday, November 1, 1950, for the first time, there was one picket who appeared upon the scene walking up and down in front of the entrance to the job carrying a sign, which, to my best recollection, stated: "This job unfair to the Brotherhood of Electrical Workers." I advised my men that one man did not constitute a picket line and my assistant Ralph Love so advised J. H. McNeese who appeared on the scene that same morning, November 1, 1950, and there represented himself to be President of the Montgomery Building and Construction Trades Council. On the next

day, Thursday, November 2, 1950, there were two pickets, one carrying the sign above described and the other carrying a sign reading "This job unfair to Carpenters' Union Local #1796."

[fol. 28] It is against the rules of our union, the International Association of Bridge Structural and Ornamental Iron Workers to cross a picket line. We are subject to fines and other penalties if we do cross a picket line and for that reason my men and I refused to cross the two-man picket line on November 2, 1950 and did not work on the job at Montgomery Towers on said date. Mr. Lowe called the business agent of our union in Birmingham, Mr. A. C. Bonner, and told him the situation. We stayed off from work until Tuesday, November 7, 1950, at which time Mr. Bonner authorized us to go back to work and said that meanwhile he would send Mr. Strickland, the International representative to Montgomery who would give us the final decision of whether to work or not to work. Mr. S. M. Walker, Vice-President of Ledbetter Erection Company and Mr. Strickland, the International Representative of our union came during the day of November 7, 1950; Mr. Strickland told us that the picket line was illegal; that we should continue to work and disregard the picket line. We worked steadily then until November 17, 1950. On this date Mr. Strickland returned to Montgomery and advised our men on the job and me that the union had determined to recognize the picket line and we could therefore not cross it or return to work as long as said picket line was in operation on the job. We accordingly ceased work and I advised Mr. Walker, Vice-President of the Ledbetter Erection Company, that my men and I could not cross the picket line and could not return to work until the picket line had been removed. The men told me that unless the picket line was removed they would have to leave this job and go elsewhere in search of employment with some other concern other than Ledbetter Erection Company because they could not run the risk of crossing the picket line. At this time I had a full force of seventeen men working under me. These men had been working together under me for some time and made a good team. We stayed from work after this occurred until the injunction was issued on Monday, No-

vember 20, 1950, and returned to work on Wednesday, November 22, 1950. When we returned to work on November 22, 1950, only eight of these seventeen men returned to the job and if the picket line had not been removed when it was, I would have lost my entire force.

There have been no disputes of any kind as to wages, working conditions, hours or anything pertaining to our employment between the members of our union working on this job in Montgomery, Alabama and the Ledbetter Erection Company.

(S.) Fred H. McDonald.

[fol. 29] Sworn to and subscribed before me this 14th day of December, 1950. (S.) Marie H. Collins, Notary Public, Montgomery County, Ala.

I hereby certify that I have this — day of December, 1950, served a copy of the foregoing affidavit on ———, attorney for respondents.

———, Of Counsel for Complainant.

Filed in Office 18th day of Dec. 1950.

Geo. H. Jones, Jr., Register.

AFFIDAVIT OF S. M. WALKER

STATE OF ALABAMA,
Jefferson County:

Before me, Minor Sternenberg, a Notary Public in and for said County and State, personally appeared S. M. Walker, known to me, who, being by me first duly sworn, deposeth and saith:

I am Vice President of Ledbetter Erection Company and have been Vice President of this Company for a period of over three years. This concern has as its principal place of business, Birmingham, Alabama and is a corporation, organized and existing under the laws of the State of Alabama. All of the structural iron workers employed by Ledbetter Erection Company are members of the International Association of Structural Steel, Bridge, and Ornamental Iron

Workers Union; and all of the operators employed by our company are members of the International Union of Operating Engineers, both of these unions being affiliated with the American Federation of Labor; and said company is engaged in the business of the erection of structural steel. We have operated under contracts with these unions since 1937. Under the terms of our contract with these unions, we agreed to employ no employees except members of these unions and not to sub-let any part of the contract to anyone employing other than union workers.

On or about June, 1950, Ledbetter Erection Company entered into a contract with Bear Brothers, Inc., under the terms of which Ledbetter Erection Company agreed to erect the structural steel and joists for the apartment house known as Montgomery Towers, Inc., on a lot on the corner of Court and Clayton Streets in the City of Montgomery, Alabama. Said work to be done in accordance with plans and specifications furnished it and in accordance with the said written contract. Said apartment house was to be ten stories in height with steel frames which required the erection of heavy steel girders and columns. When the trouble [fol. 30] with the picket line began in the Fall of 1950, we had eighteen people all members of the above named unions, consisting of two foremen, one operating engineer, and fifteen iron workers. We started work on this job on October 23rd and as far as I know, everything went along harmoniously until around November 2nd. We had no labor disputes or controversy of any kind with any of our men or their unions. Around November 2nd, my job superintendent, Mr. Fred McDonald, called me in Birmingham and told me that there was a picket line around the job and our men refused to cross the picket line. I immediately called the International Union in St. Louis, and was advised that they would investigate. I talked with Mr. J. R. Downes, and I told him that we were being used as a whip to aid in organization of Bear Brothers as a union contractor. He told me that he realized this and that he would not permit his men or his contractors to be used in this manner and asked me to send him a telegram confirming the fact that we were having these difficulties. We received an answer stating that the men would be ordered back to work on Monday, November

6th, but on the 6th the men still refused to cross the picket line and on the 7th of November, 1950, I came to Montgomery and went up to the job site and there was Mr. A. C. Bonner, the business representative for the Iron Workers Local, from Birmingham; Mr. McNeese, who represented himself as the President of the Montgomery Building and Construction Trades Council, and the business representatives of the Electricians Union and the Carpenters Union, whose names I do not remember. The men were not working then, but were standing around in groups talking and I saw there were at that time two pickets walking around and up and down in front of the entrances of the job, carrying signs, on which there were the words: "This job unfair to Carpenters Local Union No. 1796", and the other signs read "This job unfair to Electricians' Local Union No. 443, I.B.E.W., Affiliated with A. F. of L." Around noon they took away the two signs above described and substituted for them signs that said "This job Unfair to Montgomery Building and Construction Trades Council." I went up to Mr. Bonner and asked him why our men could not go to work, since the pickets were believed to be illegal and at least until the International Representative could advise if they were illegal. Mr. Bonner stated to me that he had asked that the picket lines be removed, whereby our men could return to work but had been refused. After some discussion, Mr. Bonner said if the men wanted to they could return to work until Mr. Strickland, their International Representative, who is also the Vice President of the Union, arrived in Montgomery and made the final decision. About noon Mr. Strickland [fol. 31] arrived at the Jefferson Davis Hotel and we had lunch together and I told him the same facts I had told Mr. Downes in St. Louis. A little after noon, Mr. Strickland went to the job site and had a talk with the men, and they continued working after this through the morning of November 18th, when I was notified by Mr. Fred McDonald, the job foreman, that Mr. Strickland had informed the men that the picket line was now recognized by the union and they would not be allowed to cross it. He further stated that the men said they would have to leave the employ of our company and go to another construction company in search of work if the picket line was not removed by Monday. (Our

company does not do any work on Saturday or Sunday.) I was confronted, therefore, not only with the prospect of being unable to fulfill the written contract with Bear Brothers, Inc., which our company had, but also with the disintegration of the labor force we had on this job in Montgomery. Besides these factors, we had a great deal of heavy machinery and equipment on this job, which was being kept idle and which was very expensive to move, and which would continue idle as long as our men could not do any work.

Under these circumstances I consulted my attorney and we applied to the Court in Montgomery for, and obtained, an injunction against the picketing on November 20th, 1950.

There is no connection between Ledbetter Erection Company and Bear Brothers, Inc., other than the contract under which my company agreed to erect the structural steel for the apartment house under construction at the corner of Court and Clayton Streets in Montgomery. Ledbetter Erection Company does steel erection work in all of the Southeastern States, doing general steel erection work, including bridges, buildings and tanks.

Due to contracts and schedules of work, any tie-up of the equipment affects all of the other jobs scheduled and the crane in operation on the present job in Montgomery, Alabama hereinabove described has been scheduled for work on other jobs in the State of Alabama, and out of the State of Alabama; which jobs are now being delayed because of the delay of work in Montgomery, caused by the picket line. This crane is an expensive piece of machinery, costing \$25,000.00. If the picketing is resumed on the job here, this crane will be tied up where it is now and it will mean a ruinous loss to the company, because we will be unable to have any union labor move the crane, and the other jobs will have to suffer because of the loss of the use of it while it is immobilized on the site of this job.

(S.) S. M. Walker.

[fol. 32] Sworn to and subscribed before me this the 18th day of December, 1950. (S.) Minor Sternenberg, Notary Public. (Seal.)

Filed in office 18th day of December, 1950.

George H. Jones, Jr., Register.

AFFIDAVIT OF J. E. GARNER

STATE OF ALABAMA,
Montgomery County;

Personally appeared J. E. Garner, who says he is an officer of the International Brotherhood of Electrical Workers Union, Local Number 443, and is well acquainted with the picketing of the Bear Brothers job at Court and Clayton Street and that during the time the picket was on the job from November 1st up to November 20th, there were Iron Workers on this job each day. On Monday, November 20th, the day the injunction was issued the Iron Workers and the Operating Engineer stayed away from the job for the first time.

Affiant further says that at no time during the picketing of Bear Brothers job were there any violence and at no time were there more than two pickets with signs, one of which read "This job is unfair to Montgomery Building Trades Council". Affiant further says that he has been for a long time a resident of Montgomery but does not know of any extraordinary need by any of the soldiers at the Maxwell Air Force Base for additional housing but, however, if that be true; it in the opinion of affiant would not be enough to cause an intra-state job to be under the Taft-Hartley Act.

But that the picket was placed on this job in an effort to protect the wage scale and working conditions created by many years of work of the Montgomery Building Trades through their Trades Council.

(S.) J. Earl Garner.

Sworn to and subscribed before me this — day of December, 1950. — (S.) Amos H. Wilson, Notary Public. (Seal.)

I hereby certify that I have this 11th day of December, 1950 served a copy of the foregoing Affidavit on Jack Crenshaw and M. L. Gwaltney, Attorneys for Complainant.

(S.) J. L. Busby, Attorney for Defendant.

Filed in office 18th day of Dec. 1950.

Geo. H. Jones, Jr., Register.

[fol. 33] AFFIDAVIT OF J. H. McNEESE.

STATE OF ALABAMA,
Montgomery County:

Know all men by these presents:

Personally appeared J. H. McNeese and says he is one of the Respondents in the case of Ledbetter Erection Company vs. Montgomery Building and Construction Trades Council, and that he is not the President of the Council; that he knows that the Iron Workers and operating engineers who were working for complainant did not refuse to go through the picket line until November 20th; the day the injunction was issued the Iron Workers and Engineers were off that day. Bear Brothers employed men of all crafts but did not recognize the union. They have no established wage scale that is comparable to the union scale and they refuse to deal with the union representatives. The Montgomery Building Trades Council have a rule requiring all crafts working in its jurisdiction to submit to its rules and regulations.

There were three different signs used on the picket line. First, Carpenter's Union 1796 had a sign which read "This job unfair to Carpenters' Local Union 1796". Second, the Electricians at one time had a sign which read "This job unfair to Local union 443 I.B.E.W., affiliated with A. F. of L."; Third, the Building Trades Council sign which was being used when the injunction was issued had the words "This job unfair to Montgomery Building Trades Council A. F. of L.".

I never heard of the Iron Workers asking any one to remove the picket and I am sure no such request was made of the Trades Council.

(S.) J. H. McNeese.

Sworn to and subscribed before me this 12 day of Dec. 1950. (S.) Amos H. Wilson, Notary Public.

I hereby certify that I have this 11th day of December, 1950, served a copy of the foregoing affidavit on Jack Crenshaw and M. L. Gwaltney, Attorneys for Complainant.

(S.) J. L. Busby, Atty. for Defendant.

Filed in office 18th day of Dec. 1950.

Geo. H. Jones, Jr., Register.

[fol. 34] IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted].

MOTION TO WITHDRAW ANSWER—Filed December 18, 1950

Comes the respondents, separately, and severally, and withdraw the answer heretofore filed by them.

(S.) J. L. Busby and Earl McBe, Solicitors for Respondents.

[File endorsement omitted.]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

DECREE DENYING MOTION TO DISSOLVE TEMPORARY INJUNCTION—December 21, 1950

[Title omitted]

This cause comes on to be heard on motion of the Respondents to dissolve the temporary injunction heretofore issued. In open court the Respondents withdraw the answer heretofore filed and amend the motion to dissolve by striking grounds 1 through 26 inclusive and filing additional grounds numbered 28 through 39 attacking the jurisdiction of the Court. The Court having considered the affidavits filed by both parties and having heard argument of counsel is of the opinion that the motion to dissolve is not well taken.

It is therefore, ordered, adjudged and decreed by the Court that the Respondents' motion to dissolve temporary injunction be and the same is hereby denied.

Done this 21 day of December, 1950.

(S.) Walter B. Jones, Circuit Judge.

[File endorsement omitted.]

[fol. 35] IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

MOTION TO INCREASE INJUNCTION BOND—Filed December 29, 1950

Comes the respondents, separately and severally, and move the Court to increase the injunction bond given by the complainants in said cause to the sum of Five Thousand Dollars (\$5,000), or such amount as the Court may deem proper; and as grounds of said motion states and represents, separately and severally:

1. The respondents are greatly damaged and will be further damaged by the continuance of said injunction in a sum at least ten times the present bond of Five Hundred Dollars (\$500.00).

2. The respondents have been put to great expense in and about the dissolution of said injunction and will be put to further great expense in and about the dissolution of said injunction in a sum at least ten times the present bond of Five Hundred Dollars (\$500.00).

3. The respondents maintain that the Court is without jurisdiction to issue the said injunction because of applicable federal law and the ultimate decision on the dissolution of said injunction may rest in the Supreme Court of the United States to the great cost and expense of respondents.

4. The bond of Five Hundred Dollars (\$500.00) is grossly inadequate.

In support of this motion the respondents offer the entire file in this cause, including the motion to dissolve as amended and the affidavits filed at the hearing on the motion to dissolve.

(S.) J. L. Busby, Earl McBee, Solicitors for Respondents.

To Ledbetter Erection Company or Crenshaw and Crenshaw, or M. L. Gwaltney, Solicitors of Record:

Take notice that the above and foregoing motion will be heard before the Honorable Walter B. Jones on the 2nd day of January, 1951; at 10 A.M.

(S.) Earl McBee, Of Solicitors of Record for respondents.

I hereby certify that I have served a copy of the above and foregoing motion upon Crenshaw and Crenshaw, Montgomery, Alabama, and M. L. Gwaltney, Birmingham, Alabama, solicitors of record for complainant, together with [fol. 36] notice of the date of the hearing of the same, on the 29 day of December, 1950.

(S.) Earl McBee, Of Solicitors of Record for Respondents.

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA,
IN EQUITY

[Title omitted]

DECREE INCREASING INJUNCTION BOND—January 2, 1951

This cause now coming on to be heard is submitted for decision on the motion filed herein on December 29, 1950, by the Respondents, moving the Court to increase injunction bond heretofore given in this cause, and there are present counsel for the respective sides, and the matter has been argued to the Court, and now being understood by the Court, the Court is of the opinion that the amount of the injunction bond in this cause should be increased from \$500.00 to \$2500.00. It is therefore,

Ordered, adjudged and decreed by the Court that the injunction bond in this cause be, and the same is hereby increased from the sum of \$500.00 to \$2500.00, and that Complainant may have until Monday, January 8, 1951, to give said bond, and failing therein, Respondents may move for a dissolution of said temporary injunction.

Done this January 2, 1951.

(S.) Walter B. Jones, Circuit Judge.

[File endorsement omitted.]

[Fols. 37-41] Additional Injunction Bond for \$2500 approved and Filed Jan. 8, 1951, omitted in printing.

[fols. 42-49] SECURITY FOR COSTS OF APPEAL TO SUPREME COURT—Omitted in Printing

[fol. 50] IN CIRCUIT COURT OF MONTGOMERY COUNTY

NOTICE OF APPEAL

[Title omitted]

To Ledbetter Erection Company, Inc.:

Whereas, Respondents have prayed for and obtained an appeal to the Supreme Court of the State of Alabama from the decree rendered in the above stated cause by the Circuit Court of Montgomery County, In Equity, on the 21st day of December, 1950, and have given security for the costs of said appeal; said appeal being made returnable to the second Monday in March, 1951.

Now, therefore, you are hereby cited to appear at the Supreme Court of the State of Alabama, on the second Monday in March, 1951, and defend on said appeal, if you shall think proper so to do.

Witness my hand this 12th day of January, 1951.

(S.) Geo. H. Jones, Jr., Register.

Received in office Jan. 13, 1951. G. A. Moseley, Sheriff.

Executed by serving a copy of the within Files Crenshaw, 1-16-51.

G. A. Moseley, Sheriff, Montgomery County. By Mathis & Mitchell, Deputy Sheriff.

[fol. 51] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
IN EQUITY

CERTIFICATE OF APPEAL—January 12, 1951

[Title omitted]

I, Geo. H. Jones, Jr., as Register of the Circuit Court of Montgomery County, Alabama, In Equity, do hereby certify

that an appeal was taken to the Supreme Court of the State of Alabama in the above stated cause on the 10th day of January, 1951, by the Respondents: Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith and Monroe Henderson, from a decree rendered on the 21st day of December, 1950, and that said appeal is made returnable to the second Monday in March, 1951.

I further certify that Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union, Local #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith, and Monroe Henderson, are principals and Employers' Liability Assurance Corporation, Ltd., is surety, for the costs of said appeal.

Given under my hand and seal of office, this the 12th day of January, 1951.

(S.) Geo. H. Jones, Jr., As Register of the Circuit Court of Montgomery County, Alabama, In Equity.

[fol. 52] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] IN CIRCUIT COURT OF MONTGOMERY COUNTY

ASSIGNMENT OF ERRORS

Come the Appellants, separately and severally, and say that there is manifest error in the record and proceedings in the case in the Circuit Court of Montgomery County, Alabama, In Equity, and for said error make the following assignments, separately and severally or assign the following grounds, separately and severally:

1. The trial court erred in rendering its decree denying respondents' motion to dissolve temporary injunction issued in this cause (R. 29, 30).
2. The trial court erred in overruling or denying subsection A of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).
3. The trial court erred in overruling or denying subsec-

tion B of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

4. The trial court erred in overruling or denying subsection C of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

5. The trial court erred in overruling or denying subsection D of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

6. The trial court erred in overruling or denying subsection E of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

7. The trial court erred in overruling or denying subsection F of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

(S.) J. L. Prsby, Earl McBee, Attorneys for Appellants.

[fol. 54] IN THE SUPREME COURT OF ALABAMA .

[Title omitted]

ARGUMENT AND SUBMISSION—May 8, 1951

Come the parties by attorneys and argue and submit this cause for decision.

[fol. 55] IN THE SUPREME COURT OF ALABAMA

[Title omitted]

OPINION

FOSTER, Justice.

The bill of complaint in this case was filed by appellee against appellants, labor organizations which are unincorporated associations, having their places of business in the city and county of Montgomery. The bill alleges in substance, and so far as here material, that Bear Brothers are general contractors and had entered into a contract with Montgomery Towers, Inc., for the construction of a large apartment house in the City of Montgomery in accordance

with the plans and specifications. That the complainant entered into a contract with Bear Brothers whereby it agreed to erect and rivet all the structural steel necessary for the erection of said apartment house. The bill alleges that the employees of Bear Brothers are not organized as union labor, and there was not a labor dispute existing between the complainant and any of its employees; that the respondents were not representatives of employees of Bear Brothers, and did not seek to represent the employees of complainant. The bill then alleges that respondents were seeking to force Bear Brothers to recognize or bargain with a labor organization, and to that end respondents placed a picket line across the entrance to the property where the building was being constructed. That the union employees of complainant were not willing to cross that [fol. 56] picket line to perform work on said building for the complainant, causing irreparable damages to complainant, and that respondents had declined to remove said picket line so that complainant's employees could continue to work on the job. It is also alleged in the bill:

“(12) That since the establishment of said picket line by the respondents none of the employees of the complainant Ledbetter Erection Company, Inc., will cross said picket line and the erection of said structural steel has been stopped; that if said picket line is maintained complainant will suffer irreparable damage for which it will have no adequate remedy at law; that the remedy of an action and damages provided by section 303 of the Taft-Hartley Act (29 U.S.C.A., section 187) is inadequate; that the complainant's valuable heavy machinery is being kept idle at complete loss to the complainant and complainant has been notified by its employees that if they are prevented from working on this job by reason of said picket line they will be forced to seek employment elsewhere; that in order to keep complainant's experienced crew of workmen together it would be necessary for the complainant to pay said employees even though they remained idle for an indeterminate time at a resulting loss to the complainant for which no adequate damages could be assessed or collected; that complainant's employees

have notified complainant that unless said picket line is removed on November 20, they will seek employment elsewhere; that in addition thereto it might become necessary for complainant to default in its contract with Bear Brothers, Inc., as a result of which complainant would be subjected to suits for damages for such breach.

"(13) That said apartment building is being erected under the terms of section 608 of the National Housing Act under a commitment issued by the Federal Housing Authority certifying that such housing was essential and that there existed in Montgomery a shortage of adequate housing units for rental purposes; that since the erection of said building was begun defense activities at Gunter Field and Maxwell Field have substantially increased; that complainant is informed and believes and on such information and belief avers that the commanding officer at Maxwell Air Force Base, Montgomery, Alabama, has stated publicly that after January 1, 1951, that defense activities at Maxwell Air Force Base will be stepped up to such an extent that said Air Force Base will have a larger personnel than ever before in its history; and before such defense activities were initiated the Chamber of Commerce was asked to ascertain whether the City of Montgomery could absorb 500 additional families and in making said survey the Chamber of Commerce took into consideration the availability of this apartment house under erection which would supply 124 additional rental units; that if the erection of said apartment house is delayed such rental units will not be available for the use of the members of the armed forces or other defense activities in and around Montgomery and the public interest will be inimically affected.

"(14) That complainant and its employees are entirely innocent parties and are in no way engaged in any labor dispute among themselves or with anyone else. That complainant's employees are unwilling to cross said picket line for the reason that if they cross said picket line they might be blackballed and prevented from working on further jobs; that the effect of the continued maintenance of such picket line is therefore

to prevent complainant from engaging in business and performing its said contract and also prevents the complainant's employees from engaging in gainful employment in Montgomery to the irreparable injury to both the complainant and its employees."

[fol. 57] The case comes here from a decree overruling a motion to dissolve an injunction which was theretofore issued. Upon the hearing of the motion the respondents withdrew an answer to the bill which had been filed and the first twenty-six grounds of the motion, leaving the twenty-seventh ground which is in substance that the complainant complains of a violation of section 8 (b) of the National Labor Relations Act, and that complainant has an adequate remedy as provided in section 10 of that Act. Respondents further amended their motion to dissolve the injunction by adding grounds twenty-eight to thirty-nine, inclusive. The substance of those grounds of the motion is that the sole and exclusive remedy provided for the acts complained of is section 10 of the National Labor Relations Act as amended, and that the State court is without jurisdiction by reason of the provisions of said section 10.

Appellee, who is the complainant, insists on this appeal that under that status of the pleading the only question presented is the equity of the bill, since there is no answer denying its allegations; and then insists the bill does not show that the questions involved affected the rights of the employees and employers in their relations affecting commerce, and that so far as the allegations of the bill are concerned it relates purely to a local transaction. But the allegations of the bill itself show that reliance is had upon the National Labor Relations Act as amended, for the purpose of determining whether or not the complainant is entitled to an injunction.

The bill specifically refers to the fact that the alleged picketing is secondary, as defined in section 8 (b) (4) of said Act, and that the remedy provided in section 303 of it for damages is inadequate, and that there is no adequate remedy at law.

We will refer to the Act in question as the Labor Management Relations Act of 1947 (or Labor Management Act) for that is the name given to it by section 1 of the Act.

It is sometimes called the Taft-Hartley Act, but it is all one and the same Act and serves to amend the National Labor Relations Act of 1935. As amended it is codified in Title 29 U.S.C.A., beginning with section 141 (pocket part). Section 8 (b) (4) will be found in Title 29, section 158, U.S.C.A. (pocket part). That section makes it unfair labor practice, so far as here material, for a labor organization or its agent:

[fol. 58] "(b) (4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, article, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9".

The bill alleges that the defendants were engaged in an unfair labor practice under such definition, and that contention is not seriously controverted by appellants.

Section 303 of that Act, which is section 187 of Title 29 U.S.C.A. (pocket part), makes it unlawful for any labor organization to engage in or induce or encourage employees, etc., using the same language as in section 8 (b) (4); *supra*. Subsection (b) thereof authorizes a suit in any United States District Court for damages sustained by him by reason of such conduct.

Section 10 (a) of said Act is section 160 of Title 29 U.S.C.A., (pocket part), and provides: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be

affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." There was also a proviso added permitting an agreement to submit labor disputes affecting commerce to a state agency.

The question presented on this appeal is whether or not said section 10 (a) serves to exclude jurisdiction of a state court to enjoin an unfair labor practice by a labor organization under section 8 (b) (4) and section 303, *supra*, which does not impede the flow of commerce, but which incidentally affects commerce.

The jurisdiction of the board was set up in the National Labor Relations Act before it was amended in section 10 thereof (section 160, Title 29 U.S.C.A.), in the following language: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8, *supra*) affecting commerce. This power shall be *exclusive and shall not be* affected by any other means of adjustment or prevention that has been or may be established by agreement, code, [fol. 59] law, or otherwise." The only difference between that and section 10 (a) of the Labor Management Act is that in the Labor Management Act the words "exclusive and shall," as they appear together, are excluded and also the word "code," otherwise the Labor Management Act is the same as it was under the old law, except for the proviso added. Section 8 (b) (4) of the Labor Management Act has no counterpart in the original Labor Relations Act. The unfair practices in the original act related to those of the employer only, whereas the addition of (b) to section 8, *supra*, enumerates unfair practices of a labor organization. Section 303 of the amended act, which is section 187 of Title 29 U.S.C.A. (pocket part), like section 8 (b) has no counterpart in the original act, but is new to the amendatory act.

Under section 10 (1) of the amended act the board has jurisdiction and power, upon complaint being made, to seek an injunction in the United States District Court restraining a labor organization from engaging in an unfair labor practice as defined by the amended act.

The original act, section 10, contained subsections extending from (a) to (i), inclusive. The amended act adds

subsections (j), (k) and (l). They both provide in subsection (b) thereof in substance that whenever a charge is made that any person (which now includes both employer and employee) has engaged in or is engaging in such unfair labor practice, the board shall cause a complaint to be served upon such person, stating the charges. But the original act contained no provision for court action until after the board had made a cease and desist order. Under the amendment and by virtue of subsection (l), so far as we are here concerned, it is provided that whenever such charge is that a person has engaged in unfair labor practice within the meaning of paragraph (4) (A), (B) or (C) of section 8 (b), here applicable, a preliminary investigation of such charge shall be made forthwith and, if there is reasonable cause to believe such charge, the officer or regional attorney, to whom the matter is referred, shall on behalf of the board petition in a District Court of the United States, etc., for appropriate injunctive relief pending the final adjudication of the board with respect to such matter. It will be observed, this has reference to an unfair labor practice of a labor organization and not an unfair labor practice by the employer.

[fol. 60] So that when the complaint is against the employer court action is not available by virtue of the Act until there has been an order to cease and desist. Whereas when the complaint is as to unfair labor practice of a labor organization, such injunctive relief is available on behalf of the board if upon preliminary investigation the officer or regional attorney has cause to believe the charge is true and commerce is involved.

It therefore appears that, in respect to the situation at hand, we are dealing with an unfair labor practice of a labor organization for which a remedy is given by subsection (l) of section 10, wherein it is necessary to wait for a determination upon the merits of the complaint before injunctive relief is made available, but this may be done promptly upon preliminary investigation, if the officer has cause to believe that the charge is true.

It is well understood that when the National Congress within its constitutional power passes an act conferring a right and providing a remedy, such remedy so provided

is not ordinarily exclusive, thereby preventing such other remedies as may be available to obtain its benefits under state law then existing. This principle was fully considered by us in the case of *Forsyth v. Central Foundry Co.*, 240 Ala. 277, 198 So. 706. We do not find where the principle there declared has been set aside by any decisions of the United States Supreme Court, but has been generally approved. *Mengel v. Ishee*, 4 So. 2d (Miss.) 878. See, *Overnight Motor Trans. Co. v. Missell*, 316 U. S. 572, 62 S. Ct. 1216; *Walling v. Belo Cor.* 316 U. S. 624, 62 S. Ct. 1223.

It is clear that ordinarily the jurisdiction of a state court is competent to grant injunctive relief where the purpose of the injunction is to restrain either the unlawful means by which picketing is maintained or the unlawful purpose which is sought by it (*Hotel and Restaurant Employees v. Greenwood*, 249 Ala. 265, 30 So. 2d 696; *Milk Wagon Drivers Union v. Meadowmoor*, 312 U. S. 287, 61 S. Ct. 552; *Hotel and Restaurant Employees v. Wisconsin*, 315 U. S. 437, 62 S. Ct. 706; *Carpenters and Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807), and that this right will exist, although such picketing is in respect to commerce, unless Congress has otherwise provided. *Minneapolis and St. Louis R. R. Co. v. Bombolis*, 241 U. S. 211, 36 S. Ct. 595, 598; *Forsyth v. Central Foundry Co.*, *supra*, and cases there cited. Therefore, when [fol. 61] commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the state court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the state court in that respect.

It is contended by appellee that section 10 (a), *supra*, which provides "this power (of the board) shall not be affected by any means of adjustment or prevention that has been or may be established by agreement, law or otherwise," as it now appears, leaving out the word "exclusive," simply means what it says that, although there may be other remedies provided by law, they shall not affect the power of the board, which it is claimed is the plainly expressed meaning of that clause. Whereas the original act not only meant that but also meant, as it said, that the power of the board shall be exclusive.

Of course Congress could with respect to commerce make provision for an exclusive remedy, which the original act did.

It is not contended that the amended act by its terms confers any power in that respect upon a state court. But it is contended that where that power was then in existence, except as taken away by the exclusive feature of the original act, the elimination of the exclusive feature merely served to remove an impediment in the use of the remedy then existing in a state court.

In determining the effect of eliminating the exclusive term of the original act, it is necessary to analyze not only that particular feature of the amendment but the Act as a whole as amended in other respects in connection with the original act itself.

Appellant places much reliance upon the case of *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 Fed. 2d 183, which was a case before the United States Circuit Court of Appeals. A bill for an injunction had been filed in the United States District Court by a labor union to require the employer to bargain with the union. The Norris-LaGuardia Act prohibited the issuance of such an injunction. The question was whether the Labor Management Act conferred jurisdiction upon the district court in such a suit, notwithstanding the Norris-LaGuardia Act. The court held that the Labor Management Act did not confer such jurisdiction upon the District Court of the United States, except by petition of the labor board.

In order to understand the language of the opinion in that case, it must be borne in mind that the court was [fol. 62] dealing with that particular question, especially that part of the opinion which says that the change made by eliminating the word "exclusive" did not vest the court with general jurisdiction over unfair labor practices, but was intended to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (l). When it says the "courts" it was there referring to the federal district courts, and whether jurisdiction was conferred upon the federal courts other than at the suit of the board. The opinion quoted from the report of the conference committee of Congress respecting the effect of such a change, saying that the conference agreement accepted the Senate amend-

ment that such exclusive jurisdiction was eliminated because of the provisions of the Act authorizing temporary injunctions enjoining alleged unfair labor practices, and because it made unions suable; but retained the provision that the board's power should not be affected by other means of adjustment or prevention. The following feature of said report was also copied in said opinion: "The conference agreement adopts the provisions of the Senate amendment by retaining the language which provides the board's power under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, *when two remedies exist, one before the board and one before the courts, the remedy before the board shall be in addition to, and not in lieu of, other remedies.*" The opinion in analyzing that feature of the report, observes that "The last sentence of the quotation does not mean, of course, that a general remedy in the courts is being given by the Act, *but merely that an option existed where a remedy in the courts was given by the Act, or existed otherwise.*" (Italics supplied.) It was also said that if the effect was intended to make a fundamental change in the jurisdiction (of federal courts) to deal with unfair labor practices that important fact would have been referred to. It is again said:

"We do not mean to say that unusual cases may not arise where courts of equity could be called upon to protect the rights of parties created by the act. Cf. *Steele v. Louisville & N. R. R.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; *A. F. of L. v. N. L. R. B.*, 308 U. S. 401, 412, 60 S. Ct. 300, 84 L. Ed. 347. What we have here, however, is not an unusual case calling for the exercise of extraordinary jurisdiction, but an ordinary unfair labor practice case involving alleged refusal to bargain. For such a case, the plaintiff has been provided an adequate administrative remedy before the Labor Board; and certainly the extraordinary powers of a court of equity may not be invoked until this administrative remedy has been exhausted.—*Newport News Shipbuilding & Dry Docks Co. v. Schauffler*, 4 Cir. [fol. 63] 91 F. 2d 730, 731, affirmed 303 U.S. 54, 58 S. Ct. 466, 82 L. Ed. 646."

That case was dealing with the jurisdiction of the United States District Court, which is of statutory creation authorized by the Constitution,—Article 3, Section 1,—and whose jurisdiction is limited by congressional grant. 36 Corpus Juris Secundum 512.

When properly analyzed; we think the effect of that opinion (*Amazon Cotton Mill Co. v. Textile Workers Union, supra*), does not conflict with the contention of appellee, to the extent that it was not the intention of Congress to make the administrative remedy exclusive in respect to all unfair practices affecting commerce; but that it was to be optional *where a remedy otherwise existed* in the equity courts to protect the rights of parties from irreparable damages, when the free flow of commerce was not impeded.

We have here a court of general equity powers, having the constitutional authority to issue injunctions without other grant than by section 144, Constitution of Alabama.

In this State a labor organization, being an unincorporated association, is subject to suit under State statute. Title 7, section 143, Code. That was not so in the federal courts, but the Labor Management Act made it so that the Federal District Court may have jurisdiction at the suit of the labor board for an injunction.

It will be observed that in the *Amazon Cotton Mill case, supra*, the court was not dealing with the power to use an existing remedy, but was dealing only with the question of whether or not the Labor Management Act confers jurisdiction upon the District Court of the United States at the suit of a private party, when such jurisdiction was at that time otherwise prohibited. It may be that some of the broad terms appearing in the argument would support a holding that it was intended to set aside any existing remedy at the suit of a private party in any of the courts; but when the Act impliedly reserves the power then otherwise existing, the argument must be limited to the question before the court, and that was whether the Labor Management Act conferred jurisdiction at the suit of a private party which was expressly prohibited by the Norris-LaGuardia Act, intending thereby to amend the Norris-LaGuardia Act.

The clause in question, saving other means of prevention, either at the time established or that may be established, [fol. 64] seems to manifest a purpose to take care of the

jurisdictional power then being conferred by subsection (1) on the district courts for a violation of section 8 (b), as well as any such jurisdiction "otherwise" existing in any court possessed of general power to grant injunctive relief, when the administrative remedy is inadequate.

If it was merely to harmonize with the further administrative remedy added to section 10 (a) by the proviso and the procedure under subsection (1), it would not have been appropriate to use the language to which we have referred.

Appellant also relies upon the case of *International Longshoremen v. Sunset L. & T. Co.*, 77 Fed. Supp. 119, by a district court. That case, like the *Amazon case*, *supra*, was a determination of whether an injunction in labor disputes had been extended generally to Federal District Courts by the Labor Management Act. It must of course be considered in connection with the nature of the suit and the particular controversy before the court.

However, it is not supposed or contended by appellee that the Labor Management Act serves to enlarge the rights of private litigants or to confer jurisdiction at their suit, but merely serves to eliminate that feature of the original act which excluded all courts from exercising injunctive jurisdiction and limited all jurisdiction to the board exclusively. The board could before the amendment make a cease and desist order and upon a failure to comply with it proceed in court for its enforcement. That procedure was exclusive.

The next case relied on by appellants is that of *Amalgamated Utility Workers v. Consolidated Edison*, 309 U. S. 261, 60 S. Ct. 561. In it a private party sought an injunction to enforce an order by the labor board, that arose prior to the 1947 amendment. We do not see that it has application to the present situation.

Another case relied on by appellants is that of *Gerry of California v. Superior Court of Las Angeles*, 194 Pac. 2d (Calif. Supreme Court) 689. In that case an injunction was sought in a state court against an unfair labor practice under section 8 of the Labor Management Act, as in the instant case. The Court acted in reliance upon the case of *Amalgamated Utility Workers v. Consolidated Edison*, to

which we referred *supra*. While much is said in the opinion to the effect that although the right to an injunction may exist under state law, but for the Labor Relations Act, it could not now be exercised on account of such Act.

[fol. 65]. Still another case cited by appellants is *Ex parte DeSilva*, 199 Pac. 2d 6. That was also a decision by the Supreme Court of California and was based upon the *Gerry case*, *supra*. See, 16 A. L. R. 2d 786.

There was no consideration given in those cases to the question of whether a person has the right to an injunction to prevent irreparable damage by an unfair labor practice prohibited by the Labor Management Act, but which did not affect the flow of commerce, and in which the administrative remedy was inadequate.

Appellants also rely on the case of *Amalgamated Assn. v. Wisconsin Employment Relations Board*, recently decided by the Supreme Court of the United States, 95 L. Ed. p. 383, 71 S. Ct. 359.

It will be observed in that case the court was not dealing with the power of a state court to enforce a right granted by an Act of Congress, but it was concerning the question of whether or not a state court would enforce state legislation in a field which had been covered by federal legislation, and which was in conflict with federal legislation which had superior power in that respect. It was made clear in that case that in the state court the effort was made to enforce a state law in conflict with one adopted by Congress relating to commerce, when the federal law is superior, holding that the state law must yield to the federal law.

We wish here to refer again to the principle that when a complainant comes into a court of equity seeking an injunction for the purpose of protecting a right, it is immaterial whether that right is one conferred by state or federal law unless prohibited by federal law. It is the existence of the right which is material, and not the source of its enactment, provided the enacting power had due authority. But when a complainant comes into court it is not for him to choose whether his right is such as is conferred by the state or federal law. When properly analyzed his right is dependent upon whether the one or the other is there effective, and it is not open to him to make a selection, for only

one law obtains to fix the status of a given situation. A person cannot legislate by choosing the applicable law. *Patterson v. Jefferson County*, 238 Ala. 442, 191 So. 681; *State v. Summer*, 248 Ala. 545, 28 So. 2d 565.

In this situation, it is clear that in respect to commerce, the Federal Congress has legislated defining unfair labor [fol. 66] practices by labor organizations as well as by employers, and such definition supersedes any state legislation doing so. The case of *Amalgamated Assn. v. Wisconsin*, *supra*, therefore, is not in point for the purpose of determining whether or not the Labor Management Act furnishes the exclusive remedy for its enforcement. It does fix the status of unfair labor practices to the exclusion of state laws in respect to commerce.

The situation we are dealing with is entirely different from that of *Amalgamated Assn. v. Wisconsin*, *supra*, in that, here we have no State statute setting up an employment relations board and giving it the power to enforce a labor relations law of the State, wherein such board may prescribe policies inconsistent with the national board. We have here a federal law defining unfair labor practices in commerce, which takes precedence over any state law in that respect. Our case is also different from that one in that here an employer is seeking to obtain, through the traditional jurisdiction of a court of equity, a right which the Labor Management Act has conferred upon him. We think the sole and only question is whether or not the Labor Management Act shows a clear purpose to exclude such traditional remedy afforded by the equity courts of the State to prevent irreparable injury when the flow of commerce is not impeded. So that the question is pertinent whether there can exist at the same time under applicable law, the right to an injunction under circumstances here involved, at the suit of a board for the benefit of the employer at his instance, such suit to be in the United States District Court, and at the same time the right of such employer to elect to pursue his equitable remedy for an injunction, which the equity courts of the State provide for him.

The principle is well settled that more than one remedy may be available for the redress of a given wrong. That is not in conflict with the principle that there can exist but

one law defining the status and rights of the parties in a given situation. When that status is fixed by law, as it is here fixed by the Labor Management Act, there may be, consistent with constitutional power, two remedies open for the enforcement of that right. Either of such remedies may be pursued in such situation.

Appellee cites the case of *Hughes v. Superior Court of California*, 339 U. S. 460, 70 S. Ct. 718. In that case it was "held that the Fourteenth Amendment did not bar a state from use of injunction to prohibit picketing of a store solely [fol. 67] in order to secure compliance with demand that store's employees be in proportion to racial origin of its then customers."

Appellee also cites the case of *International Brotherhood v. Hanke*, 339 U. S. 470, 70 S. Ct. 773, involving the same legal status as did the *Hughes case*, *supra*. The same conclusion was reached.

It is said in the case of *Pocahontas Terminal Cor. v. Portland Building and Construction Co.*, 93 Fed. Supp. 217, that the picketing described in the two latter cases, *supra*, might violate the unfair labor practice of the Taft Hartley Act had that been applicable. But that the facts in both cases indicate controversies of a local nature only, not affecting the flow of interstate commerce, in contrast with the controversy then before the court.

In *Interstate Union v. O'Brien*, 388 U. S. 454, 70 S. Ct. 781, a suit for an injunction was brought by a labor union to enjoin enforcement of a state law. There was a strike by the union without conforming to state law procedure, but it was conducted peacefully. The union contended that the state law violated the commerce clause of the Federal Constitution. The Supreme Court of the United States applied the Labor Management Act of 1947, saying that Congress safeguarded the exercise by employees of such activities and recognized the right to strike. It qualified and regulated that right and fixed certain prerequisites. It was held that the provisions of section 8 (b) (4) should not be read as permitting concurrent state regulation of peaceful strikes, but that Congress occupied this field and had closed it to state regulation. The opinion recognized the power of state legislation in this area but held that the

particular status could not stand since it conflicted with the federal act. The Supreme Court of Michigan had reversed a decree of the lower court enjoining the proceedings and certiorari was then brought by the union to the United States Supreme Court. No question of jurisdiction in the state court was considered. The extent to which a state may legislate in respect to unfair labor practices, defined by the Labor Management Act, was held to depend entirely upon whether it conflicts with federal law on the subject and is within the powers otherwise existing.

The term "affecting commerce" is defined in section 2 (7) of the Labor Management Act as "in commerce, or burdening or obstructing commerce, or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." [fol. 68]

The power given the board by section 10 (a) to prevent any person from engaging in any unfair labor practice (listed in section 8, *supra*) is that affecting commerce. Although the labor practices here involved may violate the provisions of the Labor Management Act, we do not think Congress intended to deprive a state court of the power to protect a person against unlawful picketing of a local nature only, not affecting the flow of interstate commerce, but causing irreparable damage, and when the administrative remedy is inadequate. The cases of *Teamsters Union v. Hanke*, 339 U. S. 470, 70 S. Ct. 773; *Building Service Employees Union v. Gazzam*, 339 U. S. 532, 70 S. Ct. 784 and *Giboney v. Empire Storage and Ice Co.*, 336 U. S. 490, 69 S. Ct. 684, have no relation to commerce, but only to the First and Fourteenth Amendments.

We will not undertake to discuss a principle applicable when the picketing is for an unlawful purpose, not conducted in an unlawful manner, but impedes the flow of interstate commerce, or when the administrative remedy is adequate. It may well be that under such circumstances Congress intended to confine the procedure to an interstate tribunal set up by it.

However, such is not this case. We think the procedure here pursued is a means of prevention, otherwise established by law under the terms of section 10 (a), *supra*.

It therefore follows that the decree of the lower court is affirmed.

Affirmed.

Livingston, C. J., Brown, Lawson, Simpson, and Stakely, JJ., concur.

IN SUPREME COURT OF ALABAMA

OPINION ON REHEARING

FOSTER, Justice:

We do not understand that appellant in his argument on application for rehearing controverts the statement in our opinion that the bill alleges facts which show the union appellant was engaged in an unfair labor practice under the Labor Management Relations Act of 1947, section 8 (b), (4), (A). It was not otherwise contended in oral argument on the submission. Appellant now observes that the several recent decisions of the United States Supreme Court cited [fol. 69] in brief were not before us when our opinion was written. *National Labor Relations Board v. Denver Building and Construction Trades Council*, 71 S. Ct. 943, 95 L. Ed. 782; *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 71 S. Ct. 954, 95 L. Ed. 793; *National Labor Relations Board v. International Rice Milling Co.*, 71 S. Ct. 961, 95 L. Ed. 777; *Local 74, United Brotherhood of Carpenters and Joiners of Am., A. F. of L. v. National Labor Relations Board*, 71 S. Ct. 966, 95 L. Ed. 800.

Those cases were decided a few days before this case. They or one of them was called to our attention. They support the theory, not controverted in this case, that the bill shows an unfair labor practice under the Labor Management Relations Act, *supra*. They also show that in order to redress that wrong a complaint was filed with the board. In some of the cases the board had a hearing and made a cease and desist order. The proceedings were to review and enforce those orders. They were upheld. The principal question controverted and settled was whether there was an unfair labor practice by the union under section 8 (b), (4), (A).

In one of the cases (*National Labor Relations Board v. International Rice Milling Co., supra*), the board dismissed the complaint because it was not such an unfair labor practice. The court sustained that ruling. It is not contended that this last case is here controlling because it applies to a different situation. In the other cases the board took jurisdiction and made a final cease and desist order. It does not appear that a preliminary injunction had been issued (as provided in section 10 [11]). But the proceeding was before the Circuit Court of Appeals to enforce the board's order as provided in section 10 (e).—Section 160 of Title 29 (Pocket Part) U. S. C. A.

Those three latter cases only show that a remedy before the board was applied to make a final order of cease and desist. There was of course nothing new or controversial about that.

The only question we have in this case is whether the State court has jurisdiction when special circumstances of irreparable injury are alleged and not controverted, augmented by the necessary time of the board in making the preliminary investigation, and subject to a possibility that the board will not take jurisdiction on account of the small amount of influence the transaction has on the flow of interstate commerce. This being in the discretion of the board, it was not necessary for complainant to take that risk in a [fol. 70] situation which was then holding up construction and causing irreparable damage.—*National Labor Relations Board v. Denver Building and Construction Trades Council, supra* (4), pages 949, 950. See, also, for current practice in that respect, "Release of National Labor Relations Board, dated October 6, 1950," under which the board will exercise jurisdiction when any enterprise has a direct inflow of material valued at \$500,000.00 a year, or an indirect inflow of material valued at \$1,000,000.00 a year.

Considering that release and the urgency of the need for an immediate injunction to prevent irreparable damage, we still think a state court of equity was open to complainant. No other court had jurisdiction. The only other remedy was before the board. We think the authorities support the view that a state court of equity has jurisdiction upon

a showing of extraordinary circumstances or irreparable injury.

The application for rehearing is overruled.

Livingston, C. J., Brown, Lawson, Simpson and Stakely, JJ., concur.

[fol. 71] THE SUPREME COURT OF ALABAMA

3 Div. 600

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL,
et als.,

VS.

LEDBETTER ERECTION COMPANY, INCORPORATED

DECREE—June 28, 1951

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered, ordered, adjudged, and decreed that the decree of the Circuit Court be in all things affirmed.

It is further considered, ordered, adjudged, and decreed that the appellants, Montgomery Building and Construction Trades Council, International Brotherhood of Electrical Workers Union Local #443, and Carpenter & Joiners Union Local #1796, and J. H. McNeese, Ross Smith, and Monroe Henderson, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, let execution issue accordingly.

[fol. 72]

[File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING--Filed July 10, 1951

Come the appellants in the above styled cause and each of them respectfully move the Court to grant unto them a rehearing in this cause, and they pray that upon the rehearing being granted, the judgment made and entered in this cause on, to-wit: the 28th day of June, 1951, affirming the decree rendered in the Circuit Court in this cause be set aside and held for naught, and in lieu thereof a judgment be rendered reversing said decree rendered by the trial Court in this cause, as, it is respectfully submitted, should have been originally done. In support of the Application for Rehearing, the brief and argument that follow are respectfully submitted.

(S.) J. L. Busby, Earl McBee, Attorneys for Appellants.

[fol. 73]

THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING 1ST APPLICATION FOR REHEARING--Thursday, January 10, 1952

It is ordered that the application for rehearing filed by the appellants in this cause on July 10th, 1951, after being duly examined and considered by the Court, be and the same is hereby overruled; and the opinion is extended on rehearing per pages 21, 22, and 23.

[fol. 74] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

[Title omitted]

SECOND APPLICATION FOR REHEARING—Filed January 21,
1952

Come the appellants in the above styled cause and each of them respectfully move the Court to grant unto them a rehearing in this cause, and they pray that upon the rehearing being granted, the judgment made and entered in this cause on, to-wit: the 28th day of June, 1951, affirming the decree rendered in the Circuit Court in this cause be set aside and held for naught, and in lieu thereof a judgment be rendered reversing said decree rendered by the trial Court in this cause, as, it is respectfully submitted, should have been originally done. In support of the Application for Rehearing, the brief and argument that follow are respectfully submitted.

(S.) J. L. Busby, Earl McBee, Attorneys for Appellants.

[fol. 75] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING 2ND APPLICATION FOR REHEARING—Thursday, March 6, 1952

It is ordered that the 2nd application for rehearing filed by the appellants in this cause on January 21, 1952, after being duly examined and considered by the Court, be and the same is hereby overruled.

[fol. 76] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 77] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL,
ET AL., Petitioners,

VS.

LEDBETTER ERECTION COMPANY, INC.

ORDER ALLOWING CERTIORARI—Filed June 2, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2415)

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APR 25 1952

CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. ~~720~~ 43

**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,**
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

**• Petition for Writ of Certiorari
to the Supreme Court of Alabama**

J. L. BUSBY,

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Birmingham 3, Alabama,**

J. ALBERT WOLL,

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**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1951

No. _____

**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,**
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA**

*To the Honorable the Justices of the Supreme Court of
the United States:*

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama, entered in the above entitled case on June 28th, 1951, rehearing last denied March 6, 1952.

OPINIONS BELOW

The opinions of the Circuit Court for Montgomery County, Alabama, Judge Walter B. Jones presiding, are not reported. The principal opinion of the Supreme Court of Alabama is reported atAla....., 26 So. (2d) 564. The opinion of the Supreme Court of Alabama, denying an application for rehearing is reported atAla. So. (2d) 29 LRR 2415.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on June 28, 1951 (R. 56). The opinion of that Court, affirming the jurisdiction of the Circuit Court to issue a preliminary injunction, at the request of an employer, to restrain alleged violations, by a labor organization, of the Labor-Management Relations Act of 1947 (hereinafter referred to as the Act) was rendered on June 24, 1951 (R. 38). An application for rehearing was filed on July 10, 1951 (R. 57) and was denied in a written opinion January 24, 1952 (R. 54). A second application for rehearing (R. 58) was denied without opinion on March 6, 1952 (R. 58). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

In this case the courts below were called upon to construe and did construe a Federal statute—the Labor-Management Relations Act of 1947—, and the assertion that this construction was erroneous, as well as the assertion of Federal preemption, namely, that the National Labor Relations Board had exclusive jurisdiction to obtain injunctions in Federal Courts for alleged violations of the Act so as to oust state courts of jurisdiction to issue injunctions against such alleged violations at the request of private parties, were both raised in appropriate motions before the Circuit Court for Montgomery County, Alabama (R. 13, 20), and by appropriate Assignment of Errors in the Supreme Court of Alabama (R. 37). Both decision of the Alabama Supreme Court, particularly that on Motion for Rehearings, expressly dealt with these Federal questions (R. 41 and 54) and construed the Act to confer jurisdiction on state courts to issue the type of injunction as above indicated. As stated by that Court in its opinion denying rehearings (R. 55):

“Considering that release and the urgency of the need for an immediate injunction to prevent irreparable damage, we still think a state court of equity was open to complainant. No other court had jurisdiction. The only other remedy was before the Board.

We think the authorities support the view that a state court of equity has jurisdiction upon a showing of extraordinary circumstances of irreparable injury."

An important collateral question of jurisdiction is presented in this case for the reason that the injunctive relief sustained below was temporary rather than final, and this Court ordinarily declines review in such circumstances. See *Moses v. Mayor*, 15 Wallace 387; *Williams v. Quill*, 303 U.S. 621. However, in those cases and other cases in which this Court has declined to review decisions where only temporary injunctive relief was involved, the merits of the case were at issue—that is, whether a Federal law had in fact been violated or a constitutional right invaded. Here, the very and, indeed, the sole point at issue is whether state courts can have *jurisdiction* to issue *either* temporary or permanent relief for alleged violations of the Labor-Management Relations Act of 1947 in view of the exclusive jurisdiction conferred upon the Board by that Act to obtain such relief in the Federal courts, and the merits—that is, whether the Act was or was not violated—were not at issue or adjudicated and, in fact, defendants did not controvert the allegations of violations of the Federal law (R. 19). Thus, for the purpose of obtaining an adjudication of the question involved in this appeal, it not only would make no difference whether the injunction in question was a preliminary or final one, but the issue, in so far as it involves the administration of the Labor-Management Relations Act of 1947, is in fact heightened because of the fact that temporary rather than ultimate relief was afforded and is here involved. The problems presented by the indiscriminate granting of temporary injunctions in labor disputes upon application of private parties are well known to Congress and this Court (see Frankfurter and Greene, *The Labor Injunction*), and, as will be seen later, Congress took special precautions to strictly limit the granting of any temporary relief for alleged violations of the Federal Act. On this question of jurisdiction of state courts

to issue such injunctions the judgment of the Alabama Supreme Court is final and conclusive in the State of Alabama and effectively disposes of that issue in a manner adverse to the interests of petitioner and others similarly situated and adversely to the position taken by the National Labor Relations Board in its construction and administration of the Federal Act. See *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2d) 183. It is respectfully submitted that this Court should take jurisdiction to review the Alabama decision herein for the very reason that the injunction is a preliminary one and the question of jurisdiction to issue either that or a final injunction has finally and conclusively been adjudicated by the court below. Cf. *Radio Station WOW v. Johnson*, 326 U.S. 120, 123-126; *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62.

QUESTION PRESENTED

Whether the Labor-Management Relations Act of 1947 confers exclusive jurisdiction on the National Labor Relations Board to seek preliminary injunctive relief against alleged violations of such Act so as to preclude the exercise of jurisdiction by state courts to issue such injunctions at the request of private parties.

STATUTE INVOLVED

The pertinent statutory provisions, which are Section 10, subsections (a), (h), (j), (k) and (l) of the Labor-Management Relations Act of 1947, are set forth in Appendix A attached hereto.

STATEMENT

As seen from the complaint (R. 3-5), Bear Brothers, general contractors, had entered into a contract with Montgomery Towers, Inc., for the construction of a large apartment house in the city of Montgomery. Bear Brothers then contracted with the respondent Ledbetter Erection Company to erect and rivet all the structural steel necessary for construction of the apartment house build-

ing. Petitioner, Montgomery Building and Construction Trades Council, seeking recognition from Bear Brothers placed a picket line across the entrance to the property where the building was being constructed.

In its complaint in the Circuit Court for Montgomery County, Alabama, respondent Ledbetter Erection Company asserted that petitioners, by such conduct, had violated Section 8(b)(4) and 303 of the Labor-Management Relations Act of 1947 (R. 5) and asked for injunctive relief against such alleged violations (R. 9). Petitioners answered (R. 14) to which respondent Ledbetter responded by an affidavit setting out in detail the interstate aspects of the construction project involved and the manner in which interstate commerce was affected by the alleged unfair practices (R. 21). In its complaint respondent had sought preliminary injunctive relief (R. 9), which relief was granted *ex parte* by the Circuit Court on November 20, 1951 (R. 10, 11). Petitioners then filed a motion and an amended motion to vacate the injunction in which the exclusive jurisdiction of the National Labor Relations Board to obtain such temporary relief was asserted (R. 12, 19). This motion was denied on December 21, 1951 (R. 33); which denial was then appealed to the Supreme Court of Alabama (R. 36, 37). After considering briefs and oral argument, that court issued its two opinions as aforesaid, the second Application for Rehearing being denied without opinion on March 6, 1952 (R. 58):

SPECIFICATIONS OF ERRORS TO BE URGED

The Supreme Court of Alabama erred:

1. In holding that the Labor-Management Relations Act of 1947 did not preclude the exercise of jurisdiction by state courts to issue injunctive relief at the request of private individuals for alleged violations of that Act.

2. In failing to hold that the Circuit Court of Montgomery County, Alabama, was without jurisdiction to issue the injunction herein, enjoining alleged violations of the

Labor-Management Relations Act of 1947, and in refusing to dissolve such injunction.

REASONS FOR GRANTING WRIT

1. The decisions of the Supreme Court of Alabama in the instant case are in direct conflict with the decisions of the Supreme Court of California in *Gerry v. Superior Court*, 32 Cal. (2d) 119, 194 P. (2d) 689, and of the Supreme Court of Minnesota in *Norris Grain Co. v. Nordaas*, 232 Minn. 91, 46 N.W. (2d) 94; petition for rehearing denied, 232 Minn. 111. These courts, together with the following trial or intermediate appellate courts, hold specifically that state courts do not have jurisdiction to enjoin alleged violations of the Labor-Management Relations Act of 1947: Mississippi Chancery Court, Leake County, in *Reed Construction Co. v. Jackson Building Trades Council*, 27 LRRM 2161; Tennessee Court of Appeals in *Robinson Freight Lines v. Teamsters Union*, 28 LRRM 2453; Pennsylvania Court of Common Pleas, Luzerne County, in *Wilkes Sportswear, Inc. v. ILGWU*, 29 LRRM 2300. In addition, the decisions of the Alabama Supreme Court herein are in conflict with the rationale and reasoning of the United States Court of Appeals for the Fifth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2) 183, and the United States Court of Appeals for the Eighth Circuit in *Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. (2d) 902, both of which hold that, under the Labor-Management Relations Act of 1947, the National Labor Relations Board has exclusive jurisdiction to seek injunctive relief in the Federal Courts for violations of that Act. Compare, however, *Goodwins v. Hagedorn*, 303 N.Y. 390; *Kincaid-Webber Motor Co. v. Quinn*, Mo. 241 S.W. (2d) 886.

Only a determination by this Court can resolve the conflict in decision as indicated above. See *Fischer v. Pauline Oil and Gas Company*, 309 U.S. 294, at 296.

2. An important question involving the construction and

administration of the Labor-Management Relations Act of 1947 is involved in this case. If the decisions of the Supreme Court of Alabama are left undisturbed, administration of the Act by the National Labor Relations Board in this and other states adopting similar views will be seriously hampered; it is not difficult to imagine the confusion and chaos which would result if the numerous state courts throughout the country were called upon to determine whether sufficient evidence of violations of the Federal Act were indicated to justify the granting of injunctive relief to private litigants while charges of the same violations may be pending before or under investigation by the Board charged by Congress to make such determinations. Nor is it hard to conceive that some employers would invariably seek to circumvent that tribunal of specialists in favor of adjudicators more inclined to their views. Further, the Congressional intent, as clearly expressed under Section 10. of the Act, to limit the granting of equitable relief for alleged violations of the Act will be flouted. Labor organizations and their members in states holding views similar to that of the Alabama Supreme Court will be subjected to abuses of the injunctive process that gave rise to the passage of the Norris-LaGuardia Act in 1932 and the whole Federal policy of carefully restricting the use of injunctions in labor disputes, as expressed in the Norris-LaGuardia Act and as expressed in the Labor-Management Relations Act of 1947 in respect to disputes in industries affecting interstate commerce, (see *Amazon Cotton Mill v. Textile Workers Union*, *supra*, at 186) will come to naught. Clearly, it is in the public interest for this Court to resolve the question involved in this case.

3. The decision of the Alabama Supreme Court is believed to be erroneous. The argument advanced by that Court that the National Labor Relations Board might not take jurisdiction, and that therefore the State courts could, forgets, first, that the Board has not to this date ceded jurisdiction to any State agency in Alabama, as it is per-

mitted to do under Section 10(a) of the Act, and, in the absence of such express ceding, the Board has exclusive jurisdiction so that it is immaterial whether the Board may or may not assert jurisdiction, and, second, that the respondent Ledbetter has not to this date attempted to invoke the jurisdiction of the National Labor Relations Board, as by the filing of charges under Section 10 or otherwise.

It is submitted that the conflicting decisions of the California and Minnesota Supreme Courts, referred to above, as well as the conflicting reasoning of the decisions of the Fifth and Eighth Circuits, also referred to above, constitute the correct interpretations of the Labor-Management Relations Act of 1947. In particular, the reasoning of the Fifth Circuit in the *Amazon Cotton* case, *supra*, is persuasive. That Court, speaking through Judge Parker, was of the opinion (1) that under the Norris-LaGuardia Act of 1932, the National Labor Relations Act of 1935, and the Labor-Management Relations Act of 1947, the Congress indicated a specific intent to greatly limit and restrict the use of the injunctive process in the Federal Courts in cases involving labor disputes, and in industries affecting interstate commerce in respect to various practices which the Congress, in Section 8 of the Act, had defined as "unfair labor practices;" (2) that this Congressional objective was prompted by the history of abuses of the injunctive process, particularly in respect to the granting of preliminary injunctions during the period which preceded the passage of the Norris-LaGuardia Act; (3) that, as indicated by the debates preceding the passage of the Labor-Management Relations Act of 1947 and as indicated by the various committee reports in respect to such Act, it was the intent of Congress to screen the use of injunctions in respect to alleged violations of that Act by providing for preliminary investigation by the National Labor Relations Board before temporary relief could be sought, and by further providing that only the National Labor Relations Board, acting through its general counsel, could have a standing to seek

any type of equitable relief against any alleged violations. The debates and reports indicated that Congress, involved in a very controversial subject, carefully weighed the injustices which might result were private litigants denied the right to seek temporary relief in cases of alleged irreparable injury, with the abuses which might result if a free use of the injunctive process was granted to private individuals, and concluded that the method of granting the right of preliminary relief to the Board only, acting in the public interest, together with the right given employers to sue for damages in the Federal Courts for alleged violations of Section 303(a) of the Act, afforded adequate relief and outweighed the possibility of abuses which might result were the unlimited right to seek injunctions granted private litigants. Accordingly, the Court concluded that only the National Labor Relations Board, and not private parties, had the right to seek temporary relief for alleged irreparable damage caused by alleged violations of the Labor-Management Relations Act of 1947.

Judge Parker pointed out the disastrous consequences which would result were private litigants given the right to seek equitable relief for alleged violations of the Act:

"If labor unions are permitted to invoke the injunctive process of the courts under the Act, so also are employers. If they may invoke jurisdiction of the courts where they themselves have appealed to the Labor Board, they may invoke it where the adversaries have appealed to that Board. It would follow, therefore, that upon the beginning of a proceeding before either the Board or a court, the party proceeded against could, and probably would, begin a proceeding in the other tribunal. More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly, the statute should not be given an interpretation which would lead to such consequences."

Judge Parker concluded:

"... [I]t is hardly reasonable to suppose that Congress intended the District Courts to have general power to grant injunctive relief, at the suit of either unions or employers, with respect to any unfair labor practice that might exist, while limiting with such meticulous care the cases in which those courts might grant injunctive relief upon petition of the Labor Board or the Attorney General acting under the direction of the President. Expressio unius est exclusio alterius."

Judge Parker was presumably referring to the many Federal District Courts; the confusion which he predicted would, of course, be compounded a thousand times were state courts as well to have the jurisdiction deemed to be theirs by the Supreme Court of Alabama. Clearly, the Alabama decision is erroneous and, in the public interest, should be reviewed and reversed under the reasoning of the Fifth Circuit in the *Amazon Cotton Mill* case, *supra*, and under the reasoning of this Court in such cases as *General Committee v. Missouri, K.T.R. Co.*, 320 U.S. 323, at 332; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261; *Bethlehem Steel Company v. New York Labor Relations Board*, 330 U.S. 767; *International Union v. O'Brien*, 330 U.S. 454; *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383; and *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U.S. 953. The above line of authorities, commencing with the *Bethlehem Steel Company* case, all indicate that the Federal government has preempted the field of certain Congressionally defined unfair labor practices in industries affecting interstate commerce, so that state tribunals may not attempt to exercise even concomitant jurisdiction in respect to those labor activities concerning which Congress has made specific regulation. See also Cox and Seidman, "Federalism and Labor Relations," 64 Harv. L. Rev., 211, at 221.

CONCLUSION

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners.

APPENDIX A

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

.

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

.

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for

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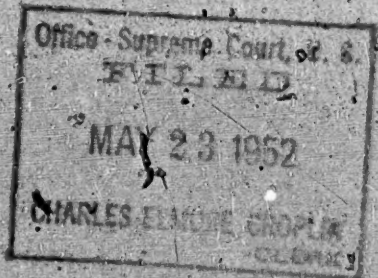
appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of

law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

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IN THE

**SUPREME COURT OF THE
UNITED STATES**

October Term, 1952

No. 43

**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,
PETITIONERS,**

Vs.

LEDBETTER ERECTION COMPANY, INC.

**BRIEF AND ARGUMENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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**IN THE
SUPREME COURT OF THE
UNITED STATES**

October Term, 1951

No. 736

**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,
PETITIONERS,**

Vs.

LEDBETTER ERECTION COMPANY, INC.

**BRIEF AND ARGUMENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

STATEMENT OF THE CASE

The statement of the case contained in the brief of Petitioners contains so many inaccuracies and omissions that we deem it necessary to make a complete statement of the case.

The Petitioners pray for a writ of certiorari to review the judgment of the Supreme Court of Alabama affirming an interlocutory order of the Circuit Court of Montgomery County, Alabama, refusing to dissolve a temporary injunction. There has been no final decree in the case.

The Complainant below, Ledbetter Erection Company, Inc., filed in the Circuit Court of Montgomery County, Alabama, its duly verified complaint for an injunction (Rec. 2-9). The complaint alleged that Bear Brothers, Inc., entered into a contract with Montgomery Towers, Inc., for the erection of a multi-story apartment house in Montgomery. Ledbetter Erection Company, Inc., entered into a sub-contract for the erection of all the structural steel necessary. Ledbetter Erec-

tion Company, Inc., had for many years, had a union shop contract with the International Association of Bridge Structural and Ornamental Iron Workers and there was no labor dispute between Ledbetter Erection Company, Inc., and this union or any of its employees (Rec. 4). The complaint further alleged that employees of Bear Brothers, Inc., were not organized as union labor, that there was no existing labor dispute between Bear Brothers, Inc. and its employees; and that no labor organization had been certified as the representatives of the employees of Bear Brothers, Inc. (Rec. 3). The petitioner, Montgomery Building and Construction Trades Council, seeking to force Bear Brothers, Inc., to bargain with them as a labor organization, which had not been certified as representative of such employees, placed a picket line across the entrances to the property on which such building was being constructed. Ledbetter Erection Company's union shop employees were not willing to cross this picket line.

The Bill further alleged (Rec. 7) that the Petitioner, Montgomery Building and Construction Trades Council knew of the union shop contract of Ledbetter Erection Company, Inc., and knew that its employees would refuse to cross the picket line; that the action of Montgomery Building and Construction Trades Council in unlawfully establishing and maintaining the picket line impaired the contract between Ledbetter Erection Company, Inc., and the International Association of Bridge Structural and Ornamental Iron Workers, was an unlawful interference with Ledbetter Erection Company's right to perform its contract with Bear Brothers, Inc., and specifically alleged that it was a combination or conspiracy for the purpose of hindering, delaying or preventing Ledbetter Erection Company, Inc., from carrying on a lawful business which was a violation of Section 54, Title 14 of the Code of Alabama of 1940, and was a violation of Title 14, Section 57 of the Code of Alabama of 1940 (Rec. 7).

The complaint further alleged that the action of Montgomery Building and Construction Trades Council was a violation

of Section 8 (b) (4) of the National Labor Relations Act, as amended, and induced or encouraged the employees of Ledbetter Erection Company, Inc., to engage in a concerted refusal to perform services for the object of forcing or requiring another employer to recognize or bargain with such labor organization as the representative of Bear Brothers, Inc., employees, where such labor organization has not been certified as a representative of such employees (R. 5). The bill contained appropriate averments of irreparable injury.

Under the Alabama practice, upon consideration of the sworn bill of complaint, a temporary writ of injunction was issued upon Complainant entering into bond as required by law. (R. 9.) This injunction was not issued in 1951, as stated in petition, but was issued on November 20, 1950. (R. 10.) On December 4, 1950, the Petitioner, Montgomery Building and Construction Trades Council, filed its answer and motion to dissolve the injunction. (R. 12). The only reference to the National Labor Relations Act contained in the motion to dissolve was ground 27 (R. 14), that the complainant had an adequate remedy for damages under Section 10 (a) of said Act. Paragraphs 9 and 11 of the answer (R. 17) both alleged that the National Labor Relations Board would have no jurisdiction over that job and that the union was not required to be certified as the representative of Bear Brothers, Inc., employees since they were not engaged in interstate commerce. At the hearing on December 18, 1950, the Montgomery Building and Construction Trades Council struck the previous grounds of the motion to dissolve and added new grounds, 28 to 39. The basis of this motion to dissolve was that the State court was without jurisdiction of the acts complained of in the complaint and that the sole and exclusive remedy was before the National Labor Relations Board. Petitioner also withdrew its answer (R. 33). The motion to dissolve was then submitted on the affidavits filed by both parties. The only references to interstate commerce in any of these affidavits are found in the affidavits of Fred C. Bear (R. 22) and S. M. Walker (R. 30). According to Bear's affidavit a great majority

of the materials used on that job would necessarily move in interstate commerce; but the amount thereof was not specified. According to Walker's affidavit the picket line prevented the use of an expensive crane costing some \$25,000.00 and if the picket line was resumed other jobs including jobs out of the State of Alabama would suffer because of the loss of the use of the crane while it was immobilized on this job.

On December 21, 1950, the motion to dissolve the temporary injunction was denied. (R. 33.) No appeal was taken from the order of November 20, 1950, issuing the temporary writ of injunction; but on January 12, 1951, the Respondents below appealed to the Supreme Court of Alabama from the interlocutory order refusing to dissolve the temporary injunction. (R. 36). Appeal from such interlocutory order is specifically permitted by Alabama Statute, Title 7, Section 757, Code of Alabama of 1940. On June 28, 1951, the Supreme Court of Alabama, all of the Justices concurring, affirmed the interlocutory decree. In this opinion (R. 53) the Supreme Court of Alabama reserved consideration of the principle to be applied where picketing for an unlawful purpose impeded the flow of interstate commerce and when the administrative remedy was adequate.

Application for rehearing was duly filed on July 10, 1951, and overruled on January 10, 1952. (R. 57.) A second application for rehearing was filed on January 21, 1952, in the face of Rule 38 of Practice in the Supreme Court of Alabama providing that "no second application for rehearing shall be received or filed in any case". This second application for rehearing was overruled on March 6, 1952. (R. 58). The petition for writ of certiorari was filed in this Court on April 25, 1952, more than ninety days after the denial of the original application for rehearing.

QUESTIONS PRESENTED

1. Whether this Court should issue a writ of certiorari to review the action of the Supreme Court of Alabama affirming

an interlocutory decree where the cause remains pending in the State court for further action which may or may not involve a federal question.

2. Whether a petition for writ of certiorari filed more than ninety days after the denial of the only application for rehearing permitted under the Rules of Practice of the Supreme Court of Alabama is timely filed.

3. Whether the Labor Management Relations Act of 1947 withdrew the jurisdiction previously existing in the State courts to prevent irreparable injury by picketing for an unlawful purpose.

STATUTES INVOLVED

The pertinent Alabama statutes, Title 26, Section 383, Title 14, Sections 54, 57, Code of Alabama of 1940, and Rule 38 of Practice in the Supreme Court of Alabama are set forth in Appendix A hereto attached. The pertinent Federal-statutory provisions are 28 U. S. C. 1257 (3); 28 U. S. C. Section 2101; Section 8 (b) of the National Labor Relations Act, 29 U. S. C., Section 158, which are likewise set forth in Appendix A hereto attached.

REASONS WRIT SHOULD NOT BE GRANTED

1. The jurisdiction of the Court to review by certiorari the judgments or decrees of a State court is limited by statute to "final judgments or decrees rendered by the highest court of a state in which a decision could be had". The judgment or decree which is here sought to be reviewed is in no sense a final judgment or decree but merely affirmed the action of the lower court on an interlocutory order refusing to dissolve the temporary injunction. It left the whole case to be disposed of upon its merits. In the absence of such final judgment or decree this Court has uniformly refused to review the action of the state court. This exact question was decided in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed. 855, where this Court said:

"... Inasmuch as the Supreme Court" (of Illinois) "affirmed the issuance merely of a preliminary injunction, we denied certiorari for want of a final judgment. 309 US 659, 84 L ed 1007, 60 S Ct 514 ..."

This has been the rule of this Court since *Gibbons v. Ogden*, 6 Wheat 448, 5 L. ed. 302; and is true even where the decree of the State court dissolved the injunction. *Moses v. Mayor, Aldermen and Common Council of the City of Mobile*, 15 Wall 387, 390, 21 L. ed. 176. Petitioner submits that the question of jurisdiction to issue the preliminary injunction has finally and conclusively been adjudicated by the court below. We submit that this is not correct and there has been no such final adjudication. In the answer originally filed by the Petitioner (R. 17), Petitioner denied that interstate commerce was affected and denied that the National Labor Relations Board would have jurisdiction over the operation on said job. The Supreme Court of Alabama withheld decision as to the jurisdiction of the Alabama Court if the flow of interstate commerce were impeded (R. 53). Until these questions have been heard and decided there has been no final adjudication by the Court of Alabama and it is respectfully submitted that certiorari should not be issued to review the case in piecemeal.

On this issue Petitioner cites the cases of *Radio Station WOW v. Johnson*, 326 U. S. 120, 89 L. ed. 2092, and *Republic Natural Gas Company v. State of Oklahoma*, 334 U. S. 62, 92 L. ed. 1212. In the first of these cases the Court held that the decree in question was final within the meaning of Section 237 of the Judicial Code, now Title 28, Section 1257. The Court, however, was careful to point out that where the remaining litigation might raise other Federal questions, to allow review of an intermediate adjudication would offend the decisive objection to fragmentary reviews.

In the *Republic Natural Gas Company* case the case of *Radio Station WOW v. Johnson* was distinguished and it was held in that case that the order of the Corporation Commission of Oklahoma requiring Republic to take gas from Peerless Oil

and Gas Company, affirmed by the Oklahoma Supreme Court, was not a final judgment which could be reviewed. Instances where this Court has entertained an appeal of an order which otherwise might be deemed interlocutory were limited to cases where the controversy had proceeded to a point where the losing party would be irreparably injured if review were unavailing. No reason is suggested wherein the Petitioner in this case would be irreparably injured by a temporary injunction issued more than 18 months ago and no reason is advanced why these proceedings should not await a final determination by the state courts. The State Court may determine that the averments of Petitioner's original answer were correct and that interstate commerce is not affected. There would then be no Federal question involved.

2. Under the Judicial Code, 28 U. S. C. Section 2101, application for writ of certiorari must be filed within ninety days after the entry of the judgment or decree. The judgment or decree of the Supreme Court of Alabama was rendered on June 28, 1951. The decree overruling the application for rehearing was entered on January 10, 1952. Under Rule 38 of the Rules of Practice of the Supreme Court of Alabama no second application for rehearing shall be received or filed in any case. It is respectfully submitted that the action of the Petitioner in filing such second application for rehearing did not extend the time for filing the petition for writ of certiorari.

In the case of *Morse v. United States*, 270 U. S. 151, 70 L. ed. 518, this Court considered a similar rule of the Court of Claims. Rule 90 of the Court of Claims provided:

"... After the court has announced its decision upon such motion no other motion by the same party shall be filed unless by leave of court..."

It was held in that case that the filing of a second motion for new trial did not suspend the running of the ninety days within which the application for appeal must have been made.

3. It is respectfully submitted that the decision of the Supreme Court of Alabama is absolutely right.

There is no question that, prior to the passage of the Labor Management Relations Act of 1947, the equity courts of the State of Alabama had the right to protect its residents against irreparable injury by picketing for an unlawful purpose. Ever since the *Thornhill* case, this Court has constantly reiterated:

"... the power of the State to set the limits of permissible contest open to industrial combatants ..." *International Brotherhood vs. Hanke*, 339 U. S. 469, 94 L. ed. 995.

The picketing in this case is very similar to that involved in the case of *Building Service Employers International Union v. Gazzam*, 339 U. S. 532, 94 L. ed. 1045, in which case this Court upheld an injunction by the State Court in the State of Washington enjoining picketing for the purpose of compelling the employer to coerce his employees to join the picketing union. The picketing in the instant case was carried on by the union for the purpose of preventing the union shop employees of Ledbetter Erection Company from performing their duties and thereby forcing Ledbetter Erection Company to put economic pressure on Bear Brothers, Inc. to coerce their non-union employees to join the Montgomery Building and Construction Trades Council. The public policy of the State of Alabama as expressed in its statutes is that every person shall be free to join or not to join any labor organization and shall be free from force, coercion or intimidation therein. The pertinent parts of the Alabama Statute, Title 26, Section 383, Code of Alabama of 1940, are almost identical with the pertinent part of the Washington statute involved in the *Gazzam* case. The purpose therefore of the picketing here enjoined was just as unlawful an attempt to coerce the employees of Bear Brothers, Inc., as was the purpose of the picketing in the *Gazzam* case, in which case this Court upheld the injunction issued by the State Court.

In fact, the motion to dissolve upon which the case was submitted to the court does not question the fact that the picket-

ing was for an unlawful purpose. The sole basis for the motion to dissolve is that since the Labor Management Relations Act of 1947 made such conduct against the public policy of the United States as well as against that of the State of Alabama, the previous general jurisdiction of the equity courts of Alabama was restricted and no action could be taken by that court. We submit that such a position is not well founded.

In *Kelly v. Washington*, 302 U. S. 1, 10, 82 L. ed. 3, 10, 58 S. Ct. 87, this Court speaking through Mr. Chief Justice Hughes, said:

"Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases* (*Simpson vs. Shepard*) 230 U. S. 352, 402, 57 L. ed. 1511, 1542, 33 S. Ct. 729, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' *Sinnot v. Davenport*, 22 How. 227, 16 L. ed. 243, 247; *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, 623, 624, 42 L. ed. 878, 881, 882, 18 S. Ct. 488; *Reid v. Colorado*, 187 U. S. 137, 148, 47 L. ed. 108, 114, 23 S. Ct. 92; *Crossman v. Lurman*,

192 U. S. 189, 199, 200, 48 L. ed. 401, 405, 406, 24 S. Ct. 234; *Asbell v. Kansas*, 209 U. S. 251, 257, 258, 52 L. ed. 778, 781, 782, 28 S. Ct. 485; 14 Anno. Cas. 1101; *Missouri P. R. Co. v. Larabee Flour Mills Co.* 211 U. S. 612, 623, 53 L. ed. 352, 361, 29 S. Ct. 214; *Savage v. Jones*, 225 U. S. 501, 533, 56 L. ed. 1182, 1194, 32 S. Ct. 715; *Atlantic Coast Line v. Georgia*, 234 U. S. 280, 293, 294, 58 L. ed. 1312, 1318, 1319, 34 S. Ct. 829; *Carey v. South Dakota*, 250 U. S. 118, 122, 63 L. ed. 886, 888, 39 S. Ct. 403; *Atchison, T. & S. F. R. Co. v. Railroad Commission*, 283 U. S. 380, 392, 393, 75 L. ed. 1128, 1136, 1137, 51 S. Ct. 553; *Nintz v. Baldwin*, 289 U. S. 346, 350, 77 L. ed. 1245, 1249, 53 S. Ct. 611; *Gilvary v. Cuyahoga Valley R. Co.* 292 U. S. 57, 78 L. ed. 1123, 54 S. Ct. 573, *supra*.

"A few illustrations will suffice. In *Reid v. Colorado*, 187 U. S. 137, 47 L. ed. 108, 23 S. Ct. 92, *supra*, the question arose with respect to a statute of Colorado aimed at the prevention of the introduction into the State of diseased animals. One who had been convicted of its violation contended that the subject of the transportation of cattle by one State to another had been so far covered by the Federal statute, known as the Animal Industry Act (May 29, 1884), 23 Stat. at L. 31, Chap. 60, 7 U. S. C. A. § 391), that no enactment by the State upon that subject was permissible. While the congressional act did deal with the subject of the driving or transporting of diseased livestock from one State into another, Congress had gone no further than to make it an offense against the United States for one knowingly to take off or send from one State to another livestock affected with infectious or communicable disease. The Court concluded that the state statute, requiring a certificate that the cattle were free from disease, irrespective of the shipper's knowledge of the actual condition of the cattle, did not cover the same ground as the Act of Congress and was not inconsistent with it. *Id.* pp. 149, 150. The principle was thus emphatically stated: 'It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police pow-

ers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that, “in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.”

“In *Savage v. Jones*, 225 U. S. 501, 56 L. ed. 1182, 32 S. Ct. 715, supra, the Court held that a statute of Indiana regulating the sale, and requiring a statement of the formula of ingredients, of concentrated commercial food for stock was not repugnant to the Federal Food and Drugs Act of (June 30) 1906 (34 Stat. at L. 768, Chap. 3915, 21 U. S. C. A. § 1). A citizen of Minnesota sought to restrain the enforcement of the Indiana statute with respect to stock food sold and transported in interstate commerce. The Federal act dealt with the subject of adulterated and misbranded foods and defined misbranding. It covered any false or misleading statements as to ingredients but did not require a disclosure of the ingredients. The State statute dealt with that omitted matter. We found that the State requirements could be sustained without impairing the operation of the Federal act as to the matters with which that act dealt. We said: ‘But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State.’” (Italics supplied).

This principle was reiterated in the case of *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, @ 253, 93 L. ed. 651, @ 662,

“However, as to coercive tactics in labor controversies,

we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that 'the intention of Congress to exclude the States from exercising their police power must be clearly manifested.'"

In the case of *Algoma Plywood & Veneer Co. v. Wis. Emp. Rel. Bd.*, 336 U. S. 301, 93 L. ed. 691 at 701, the Court in construing Section 8(3) of the National Labor Relations Act, said:

"Since we would be wholly unjustified therefore in rejecting the legislative interpretation of § 8(3) placed upon it at the time of its enactment, it is not even necessary to invoke the principle that in cases of concurrent power over commerce State law remains effective so long as Congress has not manifested an unambiguous purpose that it should be supplanted."

We respectfully submit that there is nothing in the language of the Labor Management Relations Act of 1947 manifesting a clear and unambiguous purpose that the jurisdiction admittedly existing in the state courts has been supplanted in favor of exclusive jurisdiction in the National Labor Relations Board over acts which are against the public policy of the State. Section 10(A) of the National Labor Relations Act vested in the National Labor Relations Board the exclusive power to prevent any person from engaging in any unfair labor practice listed in Section 8 of the Act. This Section was amended by the Labor Management Relations Act of 1947 by the omission of the clause, "This power shall be exclusive", and the insertion in lieu thereof of the following:

"10(A) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." (Italics supplied)

This language, we submit, does not manifest an unambiguous purpose to supplant the jurisdiction of the state courts, but to the contrary, shows that Congress recognized and did not intend to supersede other means of prevention already established by state law and upheld by the Supreme Court.

Petitioners' position, as we understand it, is that the Labor Management Relations Act, by defining certain acts as unfair labor practices, completely divested the jurisdiction previously recognized as existing in the State courts. Violence on the picket line is made an unfair labor practice under Sec. 8(b) (1) (a) of the Act. If Petitioners' position were sound, it would follow that local police authorities would have no jurisdiction over violence in connection with a strike. That this is not the correct rule was established by the decision of this Court in *National Labor Relations Board v. International Rice-Milling Company*, 341 U. S. 665, 95 L. ed. 1277. The court there said:

"In the instant case the violence on the picket line is not material. The Complaint was not based upon that violence as such. To reach it, the complaint more properly would have relied upon § 8 (b) (1) (A) or *would have addressed itself to local authorities.*" (Italics supplied.)

By this language the Court recognized that jurisdiction previously existing in the State courts over violence in the picket line was not affected by the fact that such violence was likewise made an unfair labor practice under Section 8 (b) (1) (A) of the Labor Management Relations Act. We respectfully submit that the previously well recognized power of the State court to enjoin picketing for a purpose contrary to the public policy of the State, "... the power of the State to set the limits of permissible contest open to industrial combatants ...", was not divested by any clear and unambiguous Congressional intent expressed in the Labor Management Relations Act.

CONCLUSION

There is in this case no question as raised in the case of *Amazon Cotton Mill v. Textile Workers Union*, 167 Fed (2d) 183, as to whether the Labor Management Relations Act conferred jurisdiction on the district court to issue injunctions at the request of private parties. There is in this case no question of whether the Labor Management Relations Act repealed the Norris-LaGuardia Act except at the suit of the National Labor Relations Board. There is in this case the fundamental question of our dual system of Government and the necessity of accommodation between the assertions of new federal authority and the functions of the individual states. As was stated in the case of *Bethlehem Steel Company v. N. Y. Labor Board*, 330 U. S. 767, @ 780, 91 L. ed. 123, @ 1249:

"... Since Congress can, if it chooses, entirely displace the States to the full extent of the far-reaching Commerce Clause, Congress needs no help from generous judicial implications to achieve the supersession of State authority. To construe federal legislation so as not needlessly to forbid pre-existing State authority is to respect our federal system. Any indulgence in construction should be in favor of the States, because Congress can speak with drastic clarity whenever it chooses to assure full federal authority, completely displacing the States."

The Petitioner does not deny that the picketing was for an unlawful purpose. There is serious question whether the National Labor Relations Board would assume jurisdiction in the instant case. See mimeographed release of National Labor Relations Board, dated October 6, 1950 and entitled, "N. L. R. B. Clarifies And Defines Areas In Which It Will and Will Not Exercise Jurisdiction."

The sole claim of the Petitioner is that it had the right to continue an unfair labor practice in violation of the public policy of both the State and of the Federal government during the time necessary for the Board to make preliminary in-

vestigation and decide its election to assume or reject jurisdiction. If the Board should elect jurisdiction it would then be the duty of the Board to secure from the U. S. District Court the same relief of which Petitioner here complains. Under its current practice the National Labor Relations Board could refuse to assume jurisdiction for administrative reasons, since there is involved less than \$500,000.00 of inflow of materials in interstate commerce. If the Petitioner's position is sound, the Petitioner could then continue to engage in such unfair labor practice, for the Board would not be obligated to request an injunction, the Norris-LaGuardia Act would prevent the district court from granting the relief, and according to Petitioner's position the State court is powerless to prevent the unlawful act with resultant irreparable injury. We submit that the Labor Management Relations Act of 1947 contains no clear and unambiguous language indicating an intention of Congress to supersede the right of the State court in this respect, and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Title 26, Section 383, Code of Alabama of 1940:

"§ 383. Freedom to join or refrain from joining labor organization.—Every person shall be free to join or to refrain from joining any labor organization except as otherwise provided in section 391 of this title, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family. (1943, p. 256, § 8, appvd. June 29, 1943.)"

Title 14, Section 54, Code of Alabama of 1940:

"§ 54. Conspiracy, combination or agreement to interfere with or hinder business, unlawful.—Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Title 14, Section 57, Code of Alabama of 1940:

"§ 57. Using force or threats against person engaging in lawful occupation.—Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other person, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor."

Rule 38 of Practice in the Supreme Court of Alabama:

"38. Rehearings, applications; time of filing.—All applications for rehearing must be filed with the clerk of the court, accompanied by brief for the applicant and a certificate of counsel, within fifteen days after the rendition of the judgment whether such period extends beyond the term of the court or not; and such application may be passed upon at any

regular or special term of the court. No application shall be received or filed which is not presented in strict compliance with this rule, and no second application shall be received or filed in any case. Without the order of the court or a justice thereof, the pendency of an application for rehearing shall not stay or suspend the execution of the judgment of the court. No appellee can, as matter of right, apply for a rehearing unless brief was filed with the clerk upon the original hearing within fifteen days after submission of the cause containing a certificate that a copy of same was served within said time upon counsel for appellant. An extension of time for filing such brief by any justice upon request of counsel will not suspend this rule so as to entitle the appellee to apply for a rehearing unless a brief was filed within fifteen days as above provided. This rule shall not apply in criminal cases except when the appellant files a brief upon submission of the cause."

28 U. S. C. 1257 (3):

"§ 1257. State courts; appeal; certiorari

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

28 U. S. C., Section 2101:

"§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

"(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title, holding un-

constitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

"(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

"(d) The time for appeal, or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

"(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

"(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his ap-

plication, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay. June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, § 106, 63 Stat. 104."

Section 8(b), National Labor Relations Act, 29 U. S. C., Section 158:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9."

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**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1952

No. 730-43

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**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,**
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

**Petitioners' Statement of Reply to Brief
and Argument in Opposition**

**J. L. BUSBY,
EARL MCBEE,
714 Massey Building,
Birmingham 3, Alabama,**

**J. ALBERT WOLL,
HERBERT S. THATCHER,
JAMES A. GLENN,
JOSEPH E. FINLEY,
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Washington 4, D. C.,**

Counsel for Petitioners.



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

Petitioners' Statement in Reply to Brief and Argument in Opposition

The only portion of the brief and argument which Respondent, Ledbetter Erection Company, Inc., filed in opposition to the Petition for Writ of Certiorari herein which is not adequately answered in the Petition itself is that set forth on page 7 thereof as Respondent's Point No. 2. This point also appears as Respondent's Question No. 2 (p. 5), which is as follows:

"2. Whether a petition for writ of certiorari filed more than ninety days after the denial of the only application for rehearing permitted under the Rules of Practice of the Supreme Court of Alabama is timely filed."

The answer to this question is as follows:

Under prevailing practice in the Supreme Court of Alabama it is permissible for a Justice during term to restore

a case to the rehearing calendar in spite of the rule which permits only one application for rehearing to be filed. In cases such as the present one where the Court has written an opinion in connection with the first application for rehearing, it is the general practice of the Alabama Supreme Court to permit a second application for rehearing to be heard in order to answer any questions which may have arisen by virtue of such second opinion on the first rehearing. That is what was done in the present case as seen by the certificate the Clerk of the Supreme Court of Alabama under seal of that Court, a copy of which is attached hereto as Exhibit "A" and the original of which has been filed with the Clerk of this Court, and is further seen by the letter from state Counsel for Petitioners herein to the writer of this brief, a copy of which is attached hereto as Exhibit "B." As further seen by said certificate, the instant case was pending before the Supreme Court of Alabama until the second order for application for rehearing was overruled on March 6, 1952, the Supreme Court of Alabama having considered and disposed of the second application for rehearing on its merits. Further the Record itself herein (R. 58) clearly indicates that the second application for rehearing was "overruled" and not dismissed, and was "duly examined and considered by the Court." The present petition for Writ of Certiorari was filed in this Court on April 25, 1952, which is well within the period permitted under the Judicial Code (28 U. S. C. Sec. 2101). See *Gypsy Oil Co. vs. Escoe*, 275 U. S. 498.

Respectfully submitted,

J. L. BUSBY,
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714 Massey Building,
Birmingham 3, Alabama,

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Washington 5, D. C.,

Counsel for Petitioners.

EXHIBIT "A"

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

3 Div. 600

MONTGOMERY BUILDING AND CONSTRUCTION

TRADES COUNCIL, ET AL.,

Appellants.

v.

LEDBETTER ERECTION COMPANY, INC.,

Appellee.

MONTGOMERY
 CIRCUIT COURT
 IN EQUITY

I, **J. Render Thomas**, Clerk of the Supreme Court of Alabama, hereby certify that the Supreme Court of Alabama, in the above styled cause, rendered the opinion affirming the decree of the Circuit Court, in Equity, on June 28, 1951, as shown on pages 38 to 54 of the printed "Transcript of Record"; that thereafter on July 10, 1951, the appellants filed an application for a rehearing which is shown on said printed transcript of record at page 57; that thereafter on January 10, 1952, the Supreme Court of Alabama rendered an "Opinion on Rehearing," which is shown on said printed transcript of record at pages 54 to 56 and overruled said application for rehearing—see order page 57; that thereafter on January 21st, during the same term of court, as authorized by Mr. Justice Foster, author of the opinion, the appellants filed an application for rehearing which application is shown on page 58 of said transcript of record, and said cause was pending on said second application for rehearing until March 6, 1952, at which time the Court considered and overruled said second application—see order overruling the same on page 58 of said printed transcript of record.

Under the practice of this Court, any Justice thereof may, during the term in which an application for rehearing is acted upon, of his own motion, place the cause on the rehearing docket.

WITNESS, J. Render Thomas, Clerk of the Supreme Court of Alabama, and the Seal of the Court attached, this the 23rd day of May, 1952.

(S) J. RENDER THOMAS,
Clerk of the Supreme Court
of Alabama.

Seal of the Supreme
Court of Alabama

EXHIBIT "B"

Phones 7-5133—7-5134

EARL McBEE
Attorney at Law
Suite 714 Massey Building
Birmingham 3, Alabama

May 24, 1952.

Messrs. Woll, Thatcher, Glenn & Finley,
736 Bowen Building,
Washington, D. C.

Re: *Montgomery Building & Construction
Trades Council*

vs.

Ledbetter Erection Company, Inc.

Attention Mr. Herbert S. Thatcher.

GENTLEMEN:

Following our telephone conversation, I called the Supreme Court of Alabama. The clerk advised me that nothing could be done unless I personally went to Montgomery to attend to it. When I arrived, I found that the members of the Court were not in their offices because of the death and pending funeral of the wife of the retired Chief Justice. After about three hours effort, I was finally able to get the certificate from the Clerk of the Alabama Supreme Court which was mailed to you from Montgomery yesterday.

I succeeded in seeing Mr. Chief Justice J. Ed. Livingston. He suggested that he himself would not do so but it would

be proper for the clerk to prepare a certificate showing clearly that the cause was pending in the Supreme Court of Alabama until March 6, 1952, at which time that Court considered and overruled the Second application. The clerk remembered the circumstances of the filing of the Second application. He refused to file it until Mr. Justice Foster, the author of the opinion, authorized it to be done. Under the practice as shown in the certificate, any Justice has authority during the term to order a case restored to the rehearing docket. It therefore is clear that Mr. Justice Foster was acting in keeping with the practice of the Supreme Court of Alabama when he verbally authorized the case to be restored to the rehearing docket. The reason for this action in so doing was that the original opinion was extended on the First rehearing. It is usual in such cases under the practice in the above Court for the Justice writing the opinion to order the case restored to the rehearing docket for consideration of a Second application for rehearing. This is what was done in the instant case.

The above mentioned certificate was made under the supervision of the Chief Justice and with the consent of Mr. Justice Foster, obtained by telephone. I trust it will be sufficient to show that the Supreme Court of Alabama did actually have the case pending before it until March 6, 1952, at which time a ruling was made on the merits of the motion.

Had the Court not done so, its order would have been that the application for rehearing be stricken. The only other procedure which would have resulted in a non-consideration of the merits would have been to refuse to permit the filing of the Second application.

I sincerely hope that the certificate, together with this letter of explanation, will be adequate to serve the purpose intended. At any rate, it is the best I could do.

Yours very truly,

(S) EARL MCBEE.

EM/dm

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In the Supreme Court of the United States

OCTOBER TERM, 1951

MONTGOMERY BUILDING AND CONSTRUCTION TRADES
COUNCIL, ET AL., *Petitioners*

v.

LEDBETTER ERECTION COMPANY, INC.

On Petition for a Writ of Certiorari to the Supreme Court of the
State of Alabama

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE IN SUPPORT
OF THE PETITION

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION TRADES
COUNCIL, ET AL., *Petitioners*

v.

LEDBETTER ERECTION COMPANY, INC.

On Petition for a Writ of Certiorari to the Supreme Court of the
State of Alabama

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE IN SUPPORT
OF THE PETITION

THE BOARD'S INTEREST

Bypassing the National Labor Relations Board completely, respondent in this case sought and obtained injunctive relief in an Alabama Circuit Court against conduct which respondent alleged and the court found to violate Section 8(b)(4)(A).

and (B) of the National Labor Relations Act as amended. It is the Board's position that injunctive relief against such unfair labor practices may be obtained only through the procedure specified by Congress in the Act. Under that procedure, private parties may file charges with the Board alleging that unfair labor practices in violation of Section 8(b)(4) have been committed; if such charges are filed, the General Counsel must promptly conduct a preliminary investigation to determine whether the charges have merit and whether the Board would consider the impact of the unfair labor practice on interstate commerce sufficiently serious to warrant taking jurisdiction; if the charge is found adequate in both respects, the General Counsel must file a complaint with the Board, and apply to the appropriate federal district court for temporary injunctive relief pending disposition of the complaint by the Board; after hearing on the merits the Board is authorized to grant appropriate permanent relief, subject to review by the United States Courts of Appeals.

By failing to file a charge with the Board, and seeking injunctive relief from a state court instead, respondent aborted the entire statutory scheme. The Board believes that the integrity of the administrative process provided by Congress to remedy unfair labor practices cannot survive if private parties may, at their own option, simply avoid that process and obtain injunctive relief at

their own instance from other tribunals. Accordingly, the Solicitor General, on behalf of the Board, respectfully submits this memorandum as *amicus curiae* in support of the petition.

OPINIONS BELOW

The initial opinion of the Supreme Court of the State of Alabama (R. 38-54) is reported at 57 So. 2d 112, and its supplemental opinion on rehearing (R. 54-56) is reported at 57 So. 2d 121. The decisions of the Circuit Court for Montgomery County, Alabama, granting an injunction (R. 9) and refusing to dissolve it (R. 33) are unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. 1257, and the question whether the judgment below is "final" within the meaning of that Section is discussed, *infra*, pp. 19-21.

QUESTION PRESENTED

Whether, at the suit of an employer, a state court may issue a temporary injunction against violations of Section 8(b)(4)(A) and (B) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. Supp. IV, 141 *et seq.*, are set forth in the Appendix, *infra*, pp. 23-29.

STATEMENT

On October 20, 1950, Ledbetter Erection Company filed a complaint in an Alabama Circuit Court requesting an injunction against the Montgomery Building & Construction Trades Council and others, petitioners herein, for conduct alleged to violate Section 8(b)(4) of the National Labor Relations Act (R. 2-9). The allegations of the complaint may be summarized as follows:

Bear Brothers, a general contractor, entered into an agreement for the construction of a multi-story, 124 rental unit apartment house in Montgomery, Alabama (R. 3; 6). Bear Brothers subcontracted to Ledbetter the job of erecting and riveting the structural steel used in the construction of the apartment house (R. 3). Bear Brothers' employees were unorganized; Ledbetter's employees operated under a union-shop contract (R. 3, 4). The Trades Council placed a picket line around the construction project, which, the complaint alleged, induced Ledbetter's employees "to engage in a concerted refusal to perform services for the object of forcing or requiring another employer [Bear Brothers] to recognize or bargain with the labor organization" which had not been certified by the Board, "and to force or to require complainant Ledbetter Erection Company, Inc., to cease doing business with Bear Brothers, Inc." (R. 5). This conduct was alleged to be "a violation of Section 8(b)(4) of the National Labor Relations

Act as amended and amounts to secondary picketing as therein defined and prohibited" (R. 5).¹

The complaint prayed for a temporary injunction, to be made permanent on final hearing, restraining the Trades Council from (1) picketing the construction job, (2) engaging in any unfair labor practice as defined by the Labor Management Relations Act, (3) inducing the employees of Ledbetter to engage in a concerted refusal to perform services for the purpose of forcing Bear Brothers to recognize an uncertified union as representative, (4) inducing the employees of Ledbetter to engaged in a concerted refusal to perform any services in order to force Ledbetter to cease doing business with Bear Brothers, and (5) for other relief (R. 8-9). The complaint also requested that on final hearing a judgment for damages be rendered "by reason of such unlawful picketing in violation of Section 303 of the Labor Management Relations Act" (R. 9).

On consideration of the complaint, a temporary injunction was granted in the identical terms requested (R. 9-11). The Trades Council moved to dissolve the injunction because the relief requested was within the exclusive authority of the National

¹ While the picket line was alleged simply to violate Section 8(b)(4) of the Act; it is apparent that the wording of the complaint further limits the allegations to 8(b)(4)(A) and (B). No charge alleging that this conduct constituted an unfair labor practice was ever filed with the National Labor Relations Board.

Labor Relations Board to grant and the state court was therefore without jurisdiction (R. 19-21). Thereafter, in support of the complaint, an affidavit was filed by the vice president of Bear Brothers attesting (R. 22):

that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio, plaster from Georgia, Virginia, and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce.

Another affidavit, filed by the vice president of Ledbetter in support of the complaint, alleged that heavy equipment, valued at \$25,000, which was being used on the project "has been scheduled for work on other jobs . . . out of the State of Alabama, which jobs are now being delayed because of the delay of work in Montgomery, caused by the picket line" (R. 30).

The motion to dissolve the injunction was denied by the Alabama Circuit Court (R. 33), and, on appeal to the Alabama Supreme Court from the denial of the motion, the judgment of the lower court was affirmed (R. 56-58). The ground for relief which the Alabama Supreme Court sustained, and which the complaint alleged, was a violation by Trades Council of Section 8(b)(4)(A) and (B) of the National Labor Relations Act. Distinguishing *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, and *UAW v. O'Brien*, 339 U. S. 454, because those cases pertained to enforcement of state legislation inconsistent with the National Act (R. 50-51, 52-53), the court below held that this case is different because the claim here asserted by the employer rests on "a right which the Labor Management Act has conferred upon him" (R. 51). Since the right it adjudicated in this case flows from the National Act, and not from state law, the court below stated that the only issue is "whether or not the Labor Management Act furnishes the exclusive remedy."

for its enforcement" (R. 51). The court below concluded that "it was not the intention of Congress to make the administrative remedy exclusive in respect to all unfair practices affecting commerce" (R. 48); but that state courts have jurisdiction to vindicate, through the injunctive process at the suit of private parties, rights conferred by the National Act where irreparable injury is shown and the administrative remedy is inadequate.

The court below reasoned that "when the National Congress within its constitutional power passes an act conferring a right and providing a remedy, such remedy so provided is not ordinarily exclusive, thereby preventing such other remedies as may be available to obtain its benefits under state law then existing" (R. 44-45). Accordingly, "when commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the state court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the state court in that respect" (R. 45). Such clear exclusion, the court below continued, was evinced by the Act before its amendment, for in empowering the Board to redress unfair labor practices, Section 10(a) of the National Act then read that this "power shall be exclusive"; but the word "exclusive" was deleted by the amendment to the Act, and this deletion "serves to eliminate that feature of the original act

which excluded all courts from exercising injunctive jurisdiction and limited all jurisdiction to the board exclusively" (R. 49, 45-49).

The court below distinguished *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. 2d 183 (C.A. 4), and *International Longshoremen's & Warehousemen's Union v. Sunset Line & Twine Co.*, 77 F. Supp. 119 (N.D. Cal.), by reasoning that these cases are confined to excluding federal district courts from adjudicating rights conferred by the National Act, but do not extend to state courts (R. 46-49). As to the decisions of the California Supreme Court in *Gerry v. Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689, and *In re De Silva*, 33 Cal. 2d 76, 199 P. 2d 6, which hold that a state court has no jurisdiction to redress an unfair labor practice, the court below stated that they are unpersuasive (R. 49-50). Finally, this Court's decision in *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, since it "arose prior to the 1947 amendment," was found to have no "application to the present situation" (R. 49).

For the present the court below apparently limited its holding to permitting "a state court to enjoin an unfair labor practice by a labor organization under section 8(b)(4) and section 303, * * * which does not impede the flow of commerce, but which incidentally affects commerce" (R. 43, 48, 50, 51, 53). In addition, in confining its decision to the situation where the remedy before the Board

is inadequate, the court below held the remedy before the Board to be inadequate in the "special circumstances" of an uncontroverted allegation of irreparable injury, "augmented by the necessary time of the board in making the preliminary investigation, and subject to a possibility that the board will not take jurisdiction on account of the small amount of influence the transaction has on the flow of interstate commerce" (R. 55).

ARGUMENT

1. The holding of the court below, that the rights conferred by the National Act, as amended, are not subject to exclusive enforcement through the administrative scheme which the Act creates, is in square conflict with decisions of the courts of last resort of California,² New York,³ and Minnesota,⁴ and with decisions of lower courts in other states.⁵

² *Gerry v. Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689; *La re De Silva*, 33 Cal. 2d 76, 199 P. 2d 6.

³ *Costaro v. Simons*, 302 N. Y. 318, 98 N. E. 2d 454; see also, *Ryan v. Simons*, 100 N. Y. Supp. 2d 18 (App. Div.); affirmed, 302 N. Y. 742, 98 N. E. 2d 707, certiorari denied, 342 U. S. 897; *Alonzo v. Industrial Container Corp.*, 193 Misc. 1008, 85 N. Y. Supp. 2d 835; compare, *Levinsohn v. Joint Board*, 299 N. Y. 454, 87 N. E. 2d 510.

⁴ *Norris Grain Co. v. Nordaas*, 232 Minn. 91, 46 N. W. 2d 94. *Robinson Freight Lines v. Teamsters Union*, 28 LRRM 2453 (Court of Appeals, Tenn., July 18, 1951).

⁵ *Reed Construction Co. v. Building Council*, 27 LRRM 2161 (Chan. Ct. Miss., February 22, 1950); *Wilkes Sportswear v. Garment Workers*, 29 LRRM 2300 (Common Pleas, Pa., December 26, 1951); compare *U. E. v. Lawlor*, 15 Conn. Sup. 326, 22 LRRM 2407 (Superior Ct., Conn., April 9, 1948).

It also squarely conflicts with decisions of the United States Courts of Appeals for the Fourth,⁶ Eighth,⁷ and Ninth⁸ circuits, and with numerous decisions of the federal district courts.⁹ The court below attempts to distinguish the conflicting federal authority on the ground that these holdings are explained by the curtailed jurisdiction of federal district courts to act in labor disputes by virtue of the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. 101, *et seq.*), a reason which does not apply to the exercise of general equity power by a state court (R. 46-49). But it is clear that the decisions of the federal courts are based on the view that the Board's jurisdiction to remedy unfair labor practices is exclusive, and for that reason application to other tribunals is foreclosed. Furthermore, were it true that the National Labor Relations Act contemplated a judicial as well as an administrative remedy at the option of an ag-

⁶ *Amazon Cotton Mills Co. v. Textile Workers Union*, 167 F. 2d 183 (C. A. 4); see also, *Textile Workers Union v. Aristide Mills Co.*, 193 F. 2d 529 (C. A. 4).

⁷ *Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. 2d 902 (C. A. 8).

⁸ *Schatte v. Theatrical Stage Employees*, 182 F. 2d 158 (C. A. 9), certiorari denied, 340 U. S. 827; *California Association v. Building Trades Council*, 178 F. 2d 175 (C. A. 9).

⁹ *I.L.U. v. Sunset Line & Twine Co.*, 77 F. Supp. 119 (N. D. Cal.); *United Packing House Workers v. Wilson & Co.*, 80 F. Supp. 563 (N. D. Ill.); *Textile Workers Union v. Berryton Mills*, 28 LRRM 2540 (N. D. Ga., July 23, 1951); *Born v. Cease*, 101 F. Supp. 473 (D. Alaska); compare *Reavis v. I. B. E. W.*, 101 F. Supp. 542 (N. D. Tex.).

grieved person, the earlier enacted Norris-La Guardia Act would not stand as a barrier to recourse to the federal district courts. *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 563; *Graham v. Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232, 237-240. Accordingly, the decisions of the federal courts cannot be explained on the reasoning of the court below.

2. Before amendment of the National Labor Relations Act, it was settled that vindication of the rights it conferred was "confided by the Act, by reason of the recognized public interest, to the public agency the Act creates." *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 266.¹⁰ The amendments to the Act made no change in the underlying statutory scheme. Congress was aware that the new unfair labor practices defined by the amended Act, including Section 8(b)(4), would, like the old, be enforceable only through the Board. Because of recognition that "appeal must be made * * * to the National Labor Relations Board" and that obtaining relief "depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the

¹⁰ See also, *U.E.R. & M.W. v. I.B.E.W.*, 115 F. 2d 488 (C.A. 2); *Fur Workers Union, Local No. 72 v. Fur Workers Union, Local No. 21238*, 105 F. 2d 1, 8-17 (C.A.D.C.), affirmed, 308 U.S. 522; *Int'l Brotherhood v. Int'l Union*, 106 F. 2d 871 (C.A. 9); *Blankenship v. Kurfman*, 96 F. 2d 450 (C.A. 7).

hands of the NLRB attorneys instead of attorneys of the injured party," a minority of the Senate Labor Committee, among whom Senator Taft was one, proposed that, with respect to 8(b)(4) violations, private parties be allowed direct recourse to federal district courts for injunctions under a procedure substantially freed from the restrictions of the Norris-La Guardia Act. S. Rep. No. 105, 80th Cong., 1st Sess., 54-56. After much discussion, this proposal was voted down. 93 Cong. Rec. 4847. It was rejected because enforcement was deemed more suitably entrusted to administrative processes exclusively controlled by a specialized agency in which precipitate action would be guarded against by preliminary investigation; it was also feared that private recourse to injunctive relief uncontrolled by the safeguards of the Norris-La Guardia Act would reintroduce familiar abuses. 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105 80th Cong., 1st Sess., 56. Accordingly, Congress retained the "administrative law approach" and rejected the "so-called court approach." 93 Cong. Rec. 4132. See *Bakery Drivers Union v. Wagshal*, 383 U. S. 437, 442. However, to be certain that the final relief awarded by the Board would not be rendered ineffective by the interim continuance of conduct forbidden by Section 8(b)(4)(A), (B), and (C), Congress enacted Section 10(1) of the Act requiring the appropriate officer of the Board to petition a federal

district court for a temporary injunction "pending the final adjudication of the Board with respect to such matter." Like the permanent relief to which it is auxiliary, the Board in this connection acts "in the public interest and not in vindication of purely private rights * * *." S. Rep. No. 105, 80th Cong., 1st Sess., p. 8.

Impressed "that opposition to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes seemed to be so strong," Senator Taft offered as a compromise alternative to create a cause of action for money damages only for the same conduct proscribed by Section 8(b)(4) as unfair labor practices. 93 Cong. Rec. 4843-4844. Section 303 of Title III, Labor Management Relations Act, embodying this compromise, was thereafter introduced and enacted (93 Cong. Rec. 4858-4860, 4874; see also, *ILWU v. Juneau Spruce Corp.*, 342 U. S. 237, 243-245). It permits suit for money damages, to compensate for injury from conduct identical to that prohibited by 8(b)(4), to be brought "in any district court of the United States * * *, or in any other court having jurisdiction of the parties. * * *." The court below treats the situation as if the jurisdiction conferred to entertain suits for money damages only extended to injunctive relief against 8(b)(4) conduct as well, whereas the fact is that injunctive jurisdiction was rejected and, as an alternative to it, suit for damages, to be brought in any court, was alone authorized.

3. To permit any court of general jurisdiction to enforce rights conferred by the Act on application of a private person would destroy the integrated administration of the Act through centralized control in the Board. There would be an end to "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft Corp. v. Hirsch*, 331 U. S. 752, 767-768), which it is the objective of the administrative process to achieve and which a settled course of interpretation safeguards against disruption. *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Far East Conference v. United States*, 342 U. S. 570. The anomaly of the conclusion reached by the court below is particularly apparent here. As the court below appears to acknowledge (R. 50-51, 52-53), were Alabama to duplicate the unfair labor practices defined by the National Act and apply the prohibitions to operations affecting commerce, it is clear that Alabama would have intruded into the field which Congress by the National Act has occupied to the exclusion of the states. *Plankington Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953; *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, 390, n. 12. Alabama cannot achieve the same result, and the same mischief in administration, by enforcing the National Act rather than its own law.

4. In the light of these considerations, the elimination of the word "exclusive" by the amendment to Section 10(a) of the National Act, in defining the power of the Board, does not, as the court below believes, have the extravagant purpose of overturning the statutory scheme theretofore existing and permitting concurrent enforcement of unfair labor practices by state courts in addition to the Board. As the House Conferees explained, because of the amendment's new "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in a federal district court pending proceedings before the Board (Section 10(j) and (l)), and because of "provisions making unions suable for money damages for conduct parallel to the Section 8(b)(4) unfair labor practices (*supra*, p. 14), it was thought no longer appropriate to describe the Board's power as wholly exclusive. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 52. It was for this purpose alone that the word "exclusive" was deleted. This deletion had no purpose of radically innovating a wholly new scheme of enforcement. *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. 2d 183, 187 (C.A. 4); *Born v. Cease*, 101 F. Supp. 473, 477 (D. Alaska). Furthermore, in ascertaining whether particular enforcement machinery which Congress creates precludes resort to any other, the determination has never turned on whether the word "exclusive" was in

terms used. *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 264; *Bethlehem Steel Co. v. New York State Board*, 330 U. S. 767, 772; *Fur Workers Union, Local No. 72 v. Fur Workers Union, Local No. 21238*, 105 F. 2d 1, 12 (C.A. D.C.), affirmed, 308 U. S. 522; *National Labor Relations Board v. Northern Trust Co.*, 148 F. 2d 24, 27 (C.A. 7).

5. The attempt of the court below to limit its holding to permitting a state court to act where the unfair labor practice affects commerce but does not impede its flow is unpersuasive. "Congress drew no such distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause." *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, 391. The requisite commerce existing, nothing in the Act can be read to say that unfair labor practices impeding its flow are solely for the Board but a lesser impact on it permits concurrent enforcement by state courts and the Board.

6. The court below further limits its holding to situations where the remedy before the Board is inadequate. This limitation is also unpersuasive. The grounds of inadequacy stated by the Court are (1) the time consumed in the Board's preliminary investigation before it will seek a temporary injunction, during which irreparable injury may

occur, and (2) the possibility that the Board may choose not to take jurisdiction, for administrative reasons of budget and staff availability, where the impact on commerce, though enough for the Board to exercise jurisdiction, may not be sufficiently substantial to warrant its exertion.¹¹ The first factor is present in every case so that the remedy before the Board would in the view of the court below never be adequate. Furthermore, it was precisely because the Board does conduct a preliminary investigation to screen out unmeritorious cases that enforcement of Section 8(b)(4) was entrusted to it rather than to private initiative (*supra*, p. 13). Finally, that the Board may not entertain an unfair labor practice charge, because of its insubstantial impact on commerce measured by the Board's administrative standards, does not change the right conferred, or the method of its enforcement, from a public to a private one.¹²

¹¹ See *National Labor Relations Board v. Denver Building Trades Council*, 341 U.S. 675, 684. There is no evidence in the record of this case sufficient to determine whether or not, in the exercise of its administrative discretion, the Board would act here. But compare the commerce factors involved in the construction of the multi-story 124-unit apartment-house in this case (R. 22, 30) with those involved in the construction of a commercial building in *National Labor Relations Board v. Denver Building & Trades Council*, 341 U.S. 675, 683-684, and the construction of a private dwelling in *Electrical Workers v. National Labor Relations Board*, 341 U.S. 694, 696, 699.

¹² In any event, the Board must certainly be given an opportunity to decide, before other tribunals intervene,

7. 28 U. S. C. 1257 confers on this Court the power to review "Final judgments or decrees rendered by the highest court of a State * * *." While the decree sought to be reviewed in this case (R. 56) is one which, in terms, merely affirms a lower court decree (R. 33) denying a motion to dissolve a temporary injunction, it has been settled since *Clark v. Williard*, 292 U. S. 112, 118, that the face and form of the judgment is not controlling. See, *eg.*, *Gospel Army v. Los Angeles*, 331 U. S. 543, 546.

Section 10(1) of the National Labor Relations Act, as amended, Appendix, *infra*, pp. 26-27, confers on the appropriate officer of the Board the power to petition a federal district court "for appropriate injunctive relief pending the final adjudication of the Board * * *." The whole question in this case is whether anyone other than the Board may seek temporary relief.

This question is reviewable now or it is not re-

whether its own standards call for the exercise of its jurisdiction. Since the Board can make this determination only after a charge has been filed with it, the filing of a charge with the Board would, on any theory, be an indispensable precondition to resort to any other tribunal. There is no occasion in this case to determine whether, if the Board declines to take jurisdiction, a State is free to act. If there is room for State action, it could in any event only invoke its own law, and not, as the court below did, rely on the National Act which confers no enforcement authority on it in any circumstances. Compare Section 10(a) of the Act; see also *Algoma Plywood Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 313.

viewable at all. To await the outcome of the final hearing, whether it results in the grant or denial of a permanent injunction, is necessarily to moot the question as to whether a state court has jurisdiction to grant a temporary injunction, for the temporary injunction can in no event survive the ultimate judgment. The history of the temporary injunction in labor disputes teaches that it often conclusively settles the controversy adversely to the enjoined party or at the least irretrievably alters its status. The power to grant interim relief in a labor dispute is therefore too important a question to permit to go unreviewed through the route of mootness. Compare *Cohen v. Beneficial Loan Corp.*, 337 U. S. 541, 546. In situations "where intermediate rulings may carry serious public consequences" (*Radio Station WOW v. Johnson*, 326 U. S. 120, 124), and "postponed review" is "so illusory as to make the decree 'final' now or never" (*Republic Gas Co. v. Oklahoma*, 334 U. S. 62, 70), the prerequisite of finality has been met.

The question is ripe for adjudication. The decision of the court below is its definitive disposition of the issue, and the record made is adequate for its review. In addition, because the same considerations underlie both, and the court below decided both, determination whether a state court may grant temporary injunctive relief to restrain violations of the National Act will also decide

whether permanent relief is likewise available. Moreover, as the court below noted (R. 54, 41), and as the petition for certiorari concedes (p. 3), petitioners do not contest that they have violated Section 8(b)(4)(A) and (B) of the National Act. Accordingly, there is small likelihood that further proceedings in the state court will generate additional federal questions. "The policy against fragmentary review has therefore little bearing." *Republic Gas Co. v. Oklahoma*, 334 U. S. 62, 72.

Accordingly, this is not the conventional situation where the grant or denial of interlocutory relief does not give rise to a final judgment. In this case it is the very action of the state court in undertaking to grant temporary injunctive relief, and not merely a decision made in the course of an otherwise unobjectionable interim proceeding, which creates the federal question. It is in principle indistinguishable from the finality which attaches to the grant or denial of a writ of prohibition challenging the jurisdiction of a lower state court in an appellate state court on a federal ground. *Rescue Army v. Municipal Court*, 331 U. S. 549, 565-568. It is the conclusive adjudication of a matter distinct and severable from the general subject of the litigation and therefore it is a reviewable final judgment. Compare *Republic Gas Co. v. Oklahoma*, 334 U. S. 62, 68; *Radio Station WOW v. Johnson*, 326 U. S. 420, 126; *Clark v. Williard*, 292 U. S. 112, 117-119; *Cohen v. Beneficial Loan Corp.*, 337 U. S. 541, 546-547.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted. If the writ is granted and oral argument scheduled, the Board respectfully prays leave to participate therein.

Respectfully submitted,

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MAY, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. IV, 141 *et seq.*), are as follows:

Sec. 2. When used in this Act—

(6) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * *

Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4) To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their em-

ployment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 * * *.

* * * *

Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that re-

spect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint * * *

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * *

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have oc-

occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * *

(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction

to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * *

* * * *

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

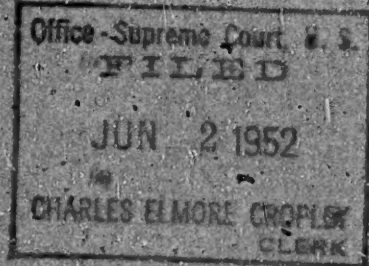
(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act ; ;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the

United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

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IN THE
SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1952

No. 226

43

MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, ET AL.,
PETITIONERS,

Vs.

LEDBETTER ERECTION COMPANY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF ALABAMA.

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**IN THE
SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1951

No. 736

**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, ET AL.,
PETITIONERS,**

Vs.**

LEDBETTER ERECTION COMPANY, INC.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF ALABAMA.**

**RESPONDENTS BRIEF IN ANSWER TO THE BRIEF
AMICUS CURIAE**

We were surprised to receive a brief amicus curiae on behalf of the National Labor Relations Board. This litigation was begun eighteen months ago and is still pending in the Courts of Alabama. No petition for intervention was filed by the National Labor Relations Board in either the lower court or the Supreme Court of Alabama and no reason is advanced why the Board cannot now intervene in the proceedings there.

It is stated in the brief amicus curiae that by seeking injunctive relief to prevent irreparable injury to itself, the Respondent aborted the entire statutory scheme. The Board seems particularly interested in maintaining the integrity of the administrative process, with no concern over the necessity of accommodating this assertion of new Federal authority with the functions of the individual state to protect its residents from irreparable injury by unlawful acts. As we see it, respect for our Federal system requires that the integrity of the administrative processes be subordinated to the pre-existing State authority.

The statement contained in the brief amicus curiae makes no reference to the charge in the bill of complaint that the acts were in violation of State law. It makes no reference to the Petitioners' original answer denying that interstate commerce was affected; and assumes that on final decree the State court will determine that interstate commerce is affected.

The sole interest of the Board is the integrity of the administrative processes vested in the Board. It is essential to point out that the pre-existing State authority is in no way derogatory of the power of the Board or its administrative processes, but on the other hand is and can be only complementary and supplementary to that administrative power. In this respect the case is entirely different from the cases arising out of an unfair labor practice by an employer. As pointed out in the brief amicus curiae, if there is a secondary boycott the appropriate officer of the Board is required to petition a Federal District Court for the identical relief here granted.

If, on the other hand, the interstate commerce is not affected or there is no violation of Section 8 (b) (4) of the Labor Management Relations Act, then the State court would admittedly have the right to grant the relief in question. Under no circumstances therefore would there be any conflict between the relief granted by the State Court and the administrative processes of the Board.

The Solicitor General points out that the Board acts in the public interest and not in vindication of purely private rights. The fundamental question in this case is whether the administrative authority vested in the Board supersedes entirely the State authority to grant appropriate relief in vindication of these private rights. We submit that under the decisions of this Court such a result should not be reached; certainly where, as here, the jurisdiction of the National Labor Relations Board has not yet been determined and the State Court limited its holding to situations where the Board would not accept jurisdiction, or where the remedy before the Board was inadequate.

It is recognized in the brief amicus curiae that the decision should not be reviewed unless it is a final judgment within the meaning of 28 U. S. C. 1257. The ingenious argument is made that the question of jurisdiction of the State court to enjoin picketing for an unlawful purpose is reviewable now, or it is not reviewable at all. The reason for this statement is that the question will become moot. No reason is advanced why it would become any more moot by awaiting the final judgment required by 28 U. S. C. 1257. It certainly would become no more moot than the temporary injunction involved in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed 855. To postpone review until the final decree is rendered would in no way make the review become illusory. If on final decree the highest court of the State of Alabama determined that the State court had no jurisdiction, there would be nothing for this Court to review. If, on the other hand, on final decree the highest Court of the State of Alabama determined that the State court did have jurisdiction, there would be the same Federal question which Petitioner now seeks to raise. There has been no conclusive adjudication of a matter distinct and severable from the litigation; for the question of jurisdiction is not severable and there has been no final adjudication by the highest Court of the State of Alabama on the question.

We therefore respectfully submit that under the cases of *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed

855; *Gibbons v. Ogden*, 6 Wheat 448, 5 L. ed 302, *Moses v. Mayor, Aldermen & Common Council of the City of Mobile*, 15 Wall. 387, 21 L. ed 176, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 43

MONTGOMERY BUILDING & CONSTRUCTION
TRADES COUNCIL, ET AL.,

Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF ALABAMA

BRIEF FOR THE PETITIONERS

Opinions Below

The principal opinion of the Supreme Court of Alabama (R. 38-54) is reported at Ala., 57 So. 2d 112. The opinion of the Supreme Court of Alabama (R. 54-56), denying an application for rehearing, is reported at Ala., 57 So. 2d 121. The decisions of the Circuit Court for Montgomery County, Alabama, granting an injunction (R. 9) and refusing to dissolve it (R. 33) are unreported.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered June 28, 1951 (R. 56). The opinion of that Court,

denying an application for rehearing, was entered January 10, 1952 (R. 54). A second application for rehearing was denied March 6, 1952 (R. 58). A petition for certiorari was filed April 25, 1952, and granted June 2, 1952. Jurisdiction of this Court is invoked under 28 U.S.C., §1257(3).

Question Presented

Whether a state court may, at the request of an employer, issue a temporary injunction against alleged violations of Sections 8(b)(4)(A) and (B) of the Labor-Management Relations Act of 1947.

Statute Involved

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C., Supp. IV, 141 et seq., are set forth in f.n. 5 and f.n. 7, *infra*.

Statement

On October 20, 1950, Ledbetter Erection Company, the respondent herein, filed a complaint in the Circuit Court for Montgomery County, Alabama, requesting an injunction against the Montgomery Building and Construction Trades Council and others, petitioners herein, to prohibit picketing of a building project in Montgomery, Alabama.

The complaint alleged that Bear Brothers, a general contractor, entered into an agreement for the construction of a multi-story apartment house in Montgomery (R. 3, 6). Bear Brothers then entered into a subcontract with Ledbetter for the erection of structural steel on the project (R. 3). The employees of Bear Brothers did not belong to a labor union; the employees of Ledbetter had for many years been a party to a union-shop contract with the International Association of Bridge, Structural and Ornamental Iron Workers (R. 3, 4). The petitioner Trades

Council, seeking to force Bear Brothers to bargain with some of its member unions, placed a picket line around the construction project (R. 4, 5).

The complaint further alleged that the union employees of Ledbetter were not willing to cross the picket line to perform work on the building, and that action of the Trades Council was in violation of Sec. 8(b)(4) of the National Labor Relations Act, as amended (R. 5). Later in its complaint, respondent alleged that the petitioners' activity also violated Sections 54 and 57 of Title 14 of the Code of Alabama of 1940, which prohibit unlawful interference with complainant's business and unlawful means of preventing a person from engaging in a lawful occupation or business (R. 7). This allegation, however, was never acted upon by the Alabama courts, nor were the state statutes ever mentioned in the opinions of the Supreme Court of Alabama.

The defendants filed an answer (R. 14) which generally denied the allegations of the complaint and which denied that interstate commerce was involved. However, this answer was subsequently withdrawn (R. 33) and, under the motion to dissolve, interstate commerce was admitted and only lack of jurisdiction in the state courts to issue injunctive relief was relied upon (R. 33, 41), so that, as the record now stands, defendants do not contest having engaged in activities which might violate Section 8(b)(4) of the Act.¹

A temporary injunction, restraining petitioners from picketing the construction project, was issued by the Circuit Court *ex parte* on November 20, 1950 (R. 10). Petitioners moved to dissolve the injunction on December 4, 1950 (R. 12), and both parties filed affidavits in connection therewith. The affidavit of Fred C. Bear, Vice-President of Bear Brothers, regarding the effect on commerce, contained the following statements (R. 22):

¹ See remark in opinion of Alabama Supreme Court below (R. 42) that "The bill alleges that the defendants were engaged in an unfair labor practice under such definition, and that contention is not seriously controverted by appellants."

"... that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio, plaster from Georgia, Virginia and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce."

The affidavit of S. M. Walker, Vice-President of the Ledbetter Erection Co., stated that a crane costing \$25,000 would be prevented from being used in construction work in and out of the State of Alabama, which would delay completion of those jobs (R. 30).

On December 21, 1950, the motion to dissolve the temporary injunction was denied (R. 33). The case was thereupon duly appealed to the Supreme Court of Alabama (R. 36). The Alabama Supreme Court affirmed the decision of the Circuit Court (R. 56), basing its authority solely upon the alleged violation of the National Labor Relations Act, as amended. Application for rehearing was duly filed on July 10, 1951, and overruled January 10, 1952 (R. 57). A second application for rehearing was filed on January 21, 1952, and overruled March 6, 1952 (R. 58).

Specification of Errors

The Supreme Court of Alabama erred:

1. In holding that the Labor Management Relations Act.

of 1947 did not preclude the exercise of jurisdiction by state courts to issue preliminary injunctive relief at the request of private individuals for alleged violations of that Act.

2. In failing to hold that the Circuit Court of Montgomery County, Alabama, was without jurisdiction to issue the injunction herein, enjoining alleged violations of the Labor-Management Relations Act of 1947, and in refusing to dissolve such injunction.

SUMMARY OF ARGUMENT

Congress, under the 1947 Amendments to the National Labor Relations Act, intended to provide exclusive remedies, with enforcement of rights and obligations obtainable only as specified under the Act, and intended to preclude the granting of temporary relief by state courts such as was accorded by the Alabama courts in this case.

1. The language of the 1947 Act itself discloses such an intent. The 1935 Act, which lodged exclusive jurisdiction in the National Labor Relations Board to provide remedies for alleged violations, was greatly enlarged and expanded in 1947 so as to embrace numerous aspects of labor relations affecting interstate commerce. The need for continuing the 1935 policy of affording singleness and expertness of remedy by a public board acting in the public interest presumably was greater than ever, and Congress gave no indication whatsoever, either in the language of the Act or in its general structure, that it intended to change the concept of public administration to that of vindication of private rights by private litigants in numerous state and federal forums. Surely, very affirmative language indicating a desire to change the concept of remedy underlying the 1935 Act could be expected in the 1947 Amendments if Congress did actually intend so drastic a change. Far from any such affirmative language appearing, however, Congress continued to declare that the power given the Board

under Section 10(a) to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." Even more significantly, it went on to add a new proviso to Section 10(a) prescribing exactly under what conditions the states could attempt to enforce the Act. None of these conditions (which include an express agreement by the Board to cede jurisdiction) have been met in the present case, and in their absence it must be assumed that state action stands excluded under the principle *expressio unis est exclusio alterius*. While the 1947 Congress, in conferring jurisdiction upon the federal Board to remedy unfair labor practices, eliminated the phrase "This power shall be exclusive" which appeared in the similar grant of jurisdiction under the 1935 Act, this omission is explained by the need for accommodation of two additional remedies appearing for the first time in the 1947 Act, and to accommodate the possibility that the Board might cede enforcement of jurisdiction to the states under the 10(a) proviso clause. The legislative history is conclusive that these were the reasons which motivated Congress in eliminating the "exclusive" clause from the 1947 Act.

2. Sections 10(j), (k) and (l) of the 1947 Act contain detailed provisions specifying the manner in which temporary injunctive relief against alleged violations of the Act can be obtained; none of these provisions contemplate or permit suits by private individuals in the state courts. Accordingly, the rule which presumes preemption, as first announced in *Houston v. Moore*, 5 Wheat. 1, and as reaffirmed in numerous subsequent decisions,—that when Congress prescribes specific punishments or remedies, Congress has indicated the extent to which it is willing to go and desires no additional or even concomitant state remedy—is here applicable, as well as the corollary thereto—that where Congress has entered a field and afforded

particular remedies or punishments, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. See *California v. Zook*, 336 U.S. 725, at 737.

3. Considerations of rationale and policy indicate Congressional intent to preclude the granting of preliminary injunctive relief in the state courts at the request of private individuals. With Congress at pains carefully to prescribe the type of remedy available for alleged violations, the forum in which such relief could be sought and the litigants empowered to seek relief, it is unreasonable to attribute a further intent to open wide the use of the injunctive processes to private litigants in the thousands of state courts throughout the forty-eight states. Surely, Congress could have contemplated no such crazy quilt of diversity nor such mire of confusion as would inevitably result, yet alone the reduction of the functions of the National Labor Relations Board to a state of idle impotency, with private individuals circumventing the orderly procedures contained in the federal Act in favor of those of any state forum they might consider more friendly to their interests. The policy of uniformity and expertness of administration would quickly be frustrated, and a direct conflict between procedures provided for in the Act and those which private litigants in their astuteness could devise would repeatedly ensue—results which it cannot readily be assumed it was the desire of Congress to permit.

4. The legislative history of the 1947 Act conclusively indicates, in committee reports, in explanations tendered by sponsors of the bill, and in questions and answers appearing in the course of debates, that Congress intended (1) to continue the policy of public vindication of public rights by a public agency contained in the original Act, and (2) to exclude private remedies for violations or remedies other than those expressly provided for in the Act and, specifically, to exclude the granting of temporary injunc-

tions by the state courts unless permitted by the National Labor Relations Board under an express agreement. Further, the history of the 1947 Amendments before Congress afford a conclusive answer to the principal contention advanced by respondents herein and to the principal justification advanced by the court below in upholding jurisdiction in the state courts to issue temporary relief, namely, that Congress could not have intended to oust state equity courts of their traditional function by granting temporary relief to avoid irreparable injury. That same argument was advanced by Senator Taft and other sponsors of proposals to permit proceedings at the suit of private individuals for temporary relief in the state courts, and such proposals were voted down after a careful weighing by Congress of those arguments with the opposing arguments that unrestrained use of the injunctive process in labor disputes too readily lent itself to abuse. Congress having the power to make this determination, it is to Congress and not to this Court that any "irreparable injury" arguments should be addressed.

A final argument made by respondents, and appearing in the opinion of the court below, is that the Board might not exercise its jurisdiction because the effect on commerce is slight or for budgetary or other administrative reasons. A short answer to this contention is that respondent has at no time applied to the Board for relief either by the filing of charges or otherwise; thus whether the Board would or would not grant relief is a matter of pure conjecture and speculation. Even had application been made, and the Board in its discretion had refused to process the case, respondent nevertheless could have no standing in the courts below. As we have seen, the Act permits intervention by the state in the processing of unfair labor practice cases only under certain circumstances and only under express agreement by the Board, and these conditions have not been met in the present case.

ARGUMENT

I

This Court has jurisdiction to review the decision below.

Although this Court has granted certiorari, thus indicating that the decision of the Alabama Supreme Court is a reviewable one, nevertheless it might be well to set forth a few principles in support of the Court's jurisdiction in view of the objections raised by respondent herein. Since the Judicial Code (28 U.S.C. 1257) confers on this Court power to review only "final judgments or decrees rendered by the highest court of a state . . .," this Court has ordinarily declined to review cases involving temporary rather than final, permanent relief. See *Moses v. Mayor*, 15 Wall. 387; *Williams v. Quill*, 303 U.S. 621.

This Court has indicated, however, that the rule of finality is not an absolute one and that the language used by Congress in 1789, in conferring power of review in this Court, will not be applied literally or mechanically. As stated by Mr. Justice Frankfurter in *Radio Station WOW v. Johnson*, 326 U.S. 120, at 124, speaking for the majority of the Court:

"But even so circumscribed a legal concept as appealable finality has a penumbral area . . . Considerations of English usage as well as those of judicial policy would readily justify an interpretation of 'final judgment' so as to preclude reviewability here where anything further remains to be determined by a state court, no matter how disassociated from the only Federal issue that has finally been adjudicated by the highest court of the state. . . .

"Unfortunately, however, the course of our jurisdictional history has not run as smoothly as such a mechanical rule would make it. To enforce it now, or to pronounce it for the future, would involve disregard of at least two controlling precedents, both of them expressing the views of numerous courts, and one of

which has stood on our books for nearly a hundred years, in an opinion carrying the authority, especially weighty in such matters, of Chief Justice Taney."

In the earlier case referred to in the above quoted opinion — *Forgay v. Conrad*, 6 How. 201, Mr. Chief Justice Taney first indicated a policy of liberally interpreting and applying the requirement of finality as follows:

"The question upon the motion to dismiss is whether this is a final decree, within the meaning of the Acts of Congress. Unfortunately, it is not final, in the strict, technical sense of that term. But this Court has not heretofore understood the words 'final decrees' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the Legislature."

Republic Natural Gas Company v. Oklahoma, 334 U.S. 62, followed *Radio Station WOW v. Johnson*. Mr. Justice Frankfurter, again speaking for the majority, indicated an additional area in which the requirement of finality would not be rigidly applied. In discussing a situation in which review would be permitted even though no technical finality was present, Justice Frankfurter indicated that a rigid application would not be required and that the rule would be relaxed where there existed "any immediate threat of irreparable damage . . . rendering postponed review so illusory as to make the decree 'final now or never'."

Mr. Justice Rutledge, dissenting in the *Republic Natural Gas Company* case, *supra*, reviewed the decisions of this Court which abjure a rigid and literal interpretation of the word "final" as appears in Section 1257 of the U.S. Code and concluded as follows:

"The fact that all phases of the litigation are not concluded does not necessarily defeat our jurisdiction . . . But not every decision by a state court leaving the controversy open to further proceedings and orders is either inconclusive of the issues or premature for purposes of review under Section 237. This appears most

recently from the decision in *Radio Station W.O.W. v. Johnson* which applied a settled line of authorities to that effect. Cf. *Richfield Oil Corp. v. State Bd. of Equalization*, 329 U.S. 69, 91 L. Ed. 80, 67 S.Ct. 156.

"In such cases the formulation of the test of finality made in the *Gospel Army* and like decisions has not been followed. Instead that question, in the special circumstances, has been treated as posing essentially a practical problem, not one to be determined either by the label attached to the state court judgment by local law, *Richfield Oil Corp. v. State Bd. of Equalization* (US) *supra*, or by the merely mechanical inquiry whether some further order or proceeding beyond 'the ministerial act of entering the judgment' may be had or necessary after our decision is rendered. *Radio Station W.O.W. v. Johnson*, *supra* (326 US at 125, 89 L ed 2097, 65 S. Ct. 1475) . . . The section's [1257] policy to furnish full, adequate and prompt review outweighed any design to secure absolute and literal 'finality'."

In considering whether to exercise its jurisdiction to review, this Court has considered substance rather than form and has indicated that the face and form of the judgment is not controlling. *Clark v. Williard*, 292 U.S. 112, at 118; *Gospel Army v. Los Angeles*, 331 U.S. 543, at 546. In the present case the central, and indeed the only, point in issue is whether the state court has power to issue a temporary, as distinguished from a permanent injunction in view of the provisions of the Labor-Management Relations Act of 1947 conferring such power solely upon the National Labor Relations Board. The whole issue of preemption or conflict between federal and state authority and thus the whole federal question here revolves around the question of preliminary rather than final relief. The State Supreme Court, both in its principal opinion and in its opinion on rehearing, made its determination solely in respect to the right of the state courts to issue preliminary relief, and its judgment in this respect is final and conclusive in the State of Alabama and effectively disposes of that issue in a manner adverse

to the interests of petitioner and others similarly situated and adversely to the position taken by the National Labor Relations Board in its construction and administration of the federal Act. The Board insists (Memorandum as Amicus Curiae in Support of the petition, p. 2) that the action of respondent in seeking temporary relief from the state courts has "aborted the entire statutory scheme" and that "the integrity of the administrative process provided by Congress to remedy unfair labor practices cannot survive if private parties may, at their own option, simply avoid that process and obtain injunctive relief at their own instance from other tribunals." Here, then, is a clear case "where intermediate rulings may carry serious public consequences." This Court is well aware of the consequences often attendant upon the issuance of preliminary injunctions in labor disputes. As will be seen in the discussion on the merits hereafter in this brief, Congress has sought to avoid the evils and abuses accompanying the promiscuous granting of temporary relief in industrial controversies by carefully providing specific procedures for obtaining such relief. If the issue is not decided in this case at its present stage, it may never be decided, because to await the outcome of the final hearing is necessarily to moot the question; the temporary injunction can in no event survive the ultimate judgment. Further, since the question of whether petitioners have violated the secondary boycott provisions of the Taft-Hartley Act involved in this case is not seriously controverted by petitioners so that the ultimate merits play no part in the case, there is little likelihood that further proceedings will give rise to additional federal questions. Indeed, a reading of the two decisions of the court below indicate that the merits may never be adjudicated in the state courts, the Alabama Supreme Court presumably having assumed a right to issue temporary relief only for the purpose of preventing irreparable injury until the merits could be decided before the proper tribunal or until the procedures available under the federal Act could be effec-

tively utilized. "The policy against fragmentary review has therefore little bearing." *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, at 72.

Mr. Justice Brandeis, speaking for the full Court in *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, has laid down a rule of policy which is directly applicable here. We appreciate, of course, that the decision is not decisive, review by this Court or the Circuit Courts of Appeal of temporary orders and judgments of the federal district courts not having the same statutory basis as review of state court judgments. Nevertheless the considerations which persuaded the Court in that case to relax its policy of denying review of temporary orders of the federal district courts is equally persuasive here, the status of the litigation in that case paralleling the status of the litigation here and similar legal points being at issue: Justice Brandeis stated as follows:

"The Circuit Court of Appeals should have reversed the decrees for a preliminary injunction. It is true that ordinarily the decree of a District Court granting or denying a preliminary injunction will not be disturbed on appeal. But that rule of practice has no application where, as here, there was an insuperable objection to the maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion."

This is not like the usual case in which this Court declines review where it is sought to review a decision in respect to the merits or as to some point made in the course of an otherwise unobjectionable interim proceeding. On the contrary, it is the very action of the state court in undertaking to grant temporary injunctive relief which creates the central issue which gives rise to the federal question. Under such circumstances, it is respectfully submitted that this Court can and should exercise its appellate powers. See *Radio Station WOW v. Johnson*, *supra*;

Rescue Army v. Municipal Court, 331 U.S. 549, at 565-568;
Cohen v. Beneficial Loan Corp., 337 U.S. 541, at 546.

II

The remedies and enforcement procedures provided by Congress under the 1947 amendments to the National Labor Relations Act are exclusive and preclude jurisdiction in the state courts to grant temporary injunctive relief at the request of private parties.

The issue here is a narrow one: Has Congress, under the Labor-Management Relations Act, precluded state courts, upon application of private litigants, from issuing temporary injunctions against alleged violations of that Act? It is petitioners' contention that Congress has provided exclusive means for the enforcement of the Act, including the obtaining of temporary relief, which do not include the issuance of temporary injunctions by state courts—that Congress has occupied the field and preempted all remedies except those specifically set forth in the Act, and has indicated an intent to exclude state action. Such intent, as specifically indicated by the language of the Act and its legislative history, can be presumed from the fact of Congressional occupancy of the field as well as from rational and policy considerations. Finally and in any event, any attempt by the state to enjoin alleged violations of the federal Act directly conflicts with the provisions of that Act so as to require that such state action be nullified.

The Supreme Court of Alabama held there was no Congressional preemption of remedy, that Congress had not indicated an intent to foreclose the issuance of temporary injunctions for violations of the Act, and that considerations of policy supported jurisdiction in the state courts to issue such preliminary relief in cases of plain irreparable injury where the remedies afforded by the Act might involve delay or where the effect on commerce was slight and it was not known whether the Board would act.

This case involves primarily a question of preemption, although elements of conflict are also present. While many aspects of the problem of preemption in the field of labor relations affecting interstate commerce are yet unresolved, the general principles and those relevant to the present controversy are reasonably clear; with these principles even the court below seems to agree,² and it is only in application of these principles that any controversy exists. Since *Houston v. Moore*, 5 Wheat. 1; *Gibbons v. Ogden*, 9 Wheat. (U.S.) 1, and the long line of cases thereafter construing and applying the Federal Supremacy Clause it has not been doubted that the affirmative grant given Congress to regulate interstate commerce under the commerce clause, taken with the Federal Supremacy Clause, permits the federal Congress to bar or exclude state action in any field of interstate commerce in which Congress has chosen to legislate. The problem of preemption is not one peculiar to labor relations; it appears in every field of federal regulation involving interstate commerce. It is not an extension of the federal power at the cost of the state or any doctrinaire nationalism which is involved, but rather the necessity of protecting the integrity of the federal legislative process under the Supremacy Clause so that the will of Congress will not be flaunted in a field specifically given to it under the federal constitution.³

In cases of alleged federal preemption or occupancy of the field, as distinguished from cases of conflict, a reading of

² As stated in its principal opinion (R. 46), "of course, Congress could with respect to commerce make provision for an exclusive remedy, which the original Act did." Earlier, the Court stated (R. 45):

"Therefore, when commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the state court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the state court in that respect."

³ An excellent discussion of the subject is contained in Ratner, Mozart G., *Problems of Federal-State Jurisdiction in Labor Relations*, 5 Ann. Conference on Labor, New York University, pp. 77-118. See also Cox and Seidman, *Federalism and Labor Relations*, 64 Harv. Law Rev. 211.

the decisions⁴ indicates that the ultimate question is always—*did Congress intend to exclude state action in a particular field in which Congress had power to legislate?* Where possible, such intent is determined by resort to the language of the Act. When that is not clear or is inconclusive, Congressional intent to preempt or exclude can be found either by resort to presumption, by resort to consideration of the rationales involved, or by resort to legislative history—to the explanations given in the course of debates or in committee reports. In the present case an intent to make the remedies of the Act exclusive is ascertainable not only in the Act itself but also by resort to any of the other three methods of determining such intent.

A. THE STATUTORY LANGUAGE CLEARLY MANIFESTS CONGRESSIONAL INTENT TO MAKE THE REMEDIES OF THE ACT EXCLUSIVE.

What has Congress manifested in the statute itself regarding its will in respect to remedies for alleged violations of the Act? We can best begin by comparing the scope and nature of the Labor-Management Relations Act of 1947 (Taft-Hartley Act) with that of the National Labor Relations Act of 1935 (Wagner Act), with particular regard to the state of the law in respect to the question of remedy as it existed prior to the passage of the latter Act. There are two basic differences between the two Acts, both significant here. First, the 1947 Act undertook to prescribe broad regulations in the entire field of labor-management relations, embracing both union and employer activities. The earlier Act dealt solely with the problem of attempts by employers to destroy or impede the right of employees to organize, bargain collectively, and engage in certain con-

⁴ See particularly discussions of the Court in *Missouri Pacific R. Co. v. Porter*, 273 U.S. 341; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148; *Hill v. Florida*, 325 U.S. 538; *California v. Zook*, 336 U.S. 725; *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383.

certed activities for their mutual aid and protection. Even though thus limited, the first Act was recognized as one in the public interest for the protection of public rights exclusively by a public agency, not for private individuals by private action. As stated by this Court in respect to the 1935 Act (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261):

"The Board as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." (309 U.S., at 265.)

"... Congress has in this instance created a public agency entrusted by the terms of its creation with the exclusive authority for the enforcement of the provisions of the Act, ..." (309 U.S., at 269.)

"We think that the provision of the National Labor Relations Act conferring exclusive power upon the Board to prevent any unfair labor practice, as defined, —a power not affected by any other means of 'prevention that has been or may be established by agreement, code, law, or otherwise'—necessarily embraces exclusive authority to institute proceedings for the violation of the court's decree directing enforcement. The decree in no way alters, but confirms, the position of the Board as the enforcing authority. It is the Board's order on behalf of the public that the court enforces. It is the Board's right to make that order that the court sustains. The Board seeks enforcement as a public agent, not to give effect to a 'private administrative agency.'" (309 U.S., at 269.)

In the 1947 Act Congress considered numerous proposals embracing almost every aspect of labor relations and emerged with a comprehensive code regulating relationships in that entire field. Following extensive debate and argument in respect to many hundreds of proposals, Congress finally arrived at specific conclusions respecting rights, duties, liabilities and immunities of employers, em-

employees and labor organizations in the field of labor relations and selected specific remedies and forums for the protection and vindication thereof. Compare *General Committee v. Missouri, K. & T. R. Co.*, 320 U.S. 323, at 332, and see *Rabouin v. National Labor Relations Board*, 195 F. (2d) 906, at 912. If Congress intended singleness and expertness of administrative remedy under the first Act, how much greater the need under the 1947 amendments with their comprehensiveness of scope and delicate balancing of interests, and if vindication of rights in the first Act was entrusted to a public agency acting in the public interest, how much greater the need for continuing this concept in the second Act where a far broader segment of the public was made liable to federal regulation? One would suppose that Congress would have utilized very clear language if it intended entirely to change the concept of public administration.

The second basic distinction between the Wagner and the Taft-Hartley Acts is that under the latter the Congress was acutely aware, by virtue of decisions of this Court on the subject, of the grave problems of preemption and legislated specifically with that problem in mind. As stated by this Court in *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S., at 397:

"When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026 (1947), and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers in so far as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particu-

larity those areas in which it desired state regulation to be operative."

Aware of the problems of preemption, and aware of the public nature of the Act it was amending and the exclusiveness of remedy thereunder, Congress very significantly did not choose to indicate either by alteration in declaration of policy or in the framework of the Act, or by any affirmative language, that it intended to change the nature of the Act from that of one of vindication of rights in the public interest by a public agency to that of one of vindication of private rights by private individuals. On the contrary, Congress indicated very specifically that remedies under the 1947 amendments were enforceable only by the same public agency that afforded remedies under the 1935 Act, except in the sole situation where that public agency, by express agreement and under certain conditions, might seek to entrust enforcement to the states.

The relevant sections of the 1947 amendments are 10(a), 10(j), 10(k) and 10(l), set forth in full below.⁵

⁵ "Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

"Sec. 10(j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice

thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

"Sec. 10(k). Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

"Sec. 10(l). Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

Subsection (a) of Section 10 of both the 1935 and 1947 Acts contains the grant of power to enforce the provisions of the unfair labor practice section of the Act; in consequence the language of that subsection is of vital importance in the determination of the issues in the present case. In the 1947 Act, as under the 1935 Act, the Board alone is empowered to prevent unfair labor practices. The 1947 Act continues to emphasize, as did the 1935 Act, that this power is only for the Board to exercise: *"This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise."* (Emphasis supplied.) The 1947 Congress, however, omitted the phrase "This power shall be exclusive" which appeared in the 1935 Act. Since this omission is strongly relied upon by the court below for its holding that the Congress did not intend its remedies to be exclusive, the reasons for this omission—namely, to accommodate new and additional remedies not contained in the 1935 Act—are discussed in full in a latter portion of this brief. Whatever significance might otherwise have been attached to this omission as it affects the issue in this case, that significance is entirely dissipated by the new proviso clause which the 1947 Congress added to subsection 8, and it is this proviso clause which, along with subsection (1), is controlling in respect to the question of the extent to which Congress intended the states to administer or enforce the unfair labor practice provisions of the Act.

The proviso clause undertakes to specify precisely under what circumstances and conditions the states may exercise jurisdiction to enforce the Act. The clause empowers the Board to cede jurisdiction to any state agency in any case (except cases involving four specified industries) but provides that such cession can be accomplished only by express agreement between the Board and the state and only unless the state law applicable to determination of any case thus ceded is consistent with the federal law. The language of

this proviso makes clear that Congress considered and legislated directly in respect to state enforcement and carefully delineated under what conditions and circumstances the states could exercise jurisdiction. Having considered the problem and taken action thereon, it is not for the state of Alabama or for this Court to add to or take away from the conditions carefully prescribed by Congress under which the states may attempt to enforce the unfair labor practice sections of the Act. The principal "*expressio unius est exclusio alterius*" is directly applicable here; Congress has outlined certain conditions under which states might exercise jurisdiction and no others can be permitted. As stated by the Court of Appeals for the Second Circuit in a recent decision (*Rabouin v. National Labor Relations Board*, 195 F. 2d 906 at 912):

"In a matter of such bitter controversy as the Taft-Hartley Act, the product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators, the courts should proceed cautiously. For it would appear that Congress has already spoken in this regard."

Subsections (b) through (i), which further deal with prevention of unfair labor practices by the Board, are identical in both the 1935 and 1947 Acts. Three new subsections, (j), (k) and (l), are added to the 1947 Act. While subsections (j) and (k) serve to indicate the Congressional scheme of prevention, subsection (l) alone is directly relevant since it deals with prevention of violations of Section 8(b)(4)(A) of the Act, and it is a violation of that section only which was alleged and is involved in the case below.

Subsection (l) is of further importance—indeed, it is equally controlling with the proviso to subsection (a) discussed above—because it undertakes to prescribe the manner in which *preliminary* relief is obtainable for alleged violations of that portion of the unfair labor practice provisions of the Federal Act which are directly involved in this case. Congress having prescribed a certain method of

obtaining interlocutory relief, it must be taken that its intended no other, and the same principles advanced above in respect to the effect of the careful delineation in the proviso clause to subsection (a) are applicable here in respect to the conditions under which temporary relief for alleged violations of the Act can be obtained.

Subsection (1) charges the Board's regional office with the duty of making preliminary investigations of charges that Section 8(b)(4)(A) has been violated. Following such investigation, the Board's regional representative alone is directed mandatorily, if he "has reasonable cause to believe such charge is true," to petition in the district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter." Obviously, careful screening of the charges by representatives of the tribunal of experts which will make the final adjudication is contemplated before injunctive relief is obtainable, and even then such relief is obtainable only by such Board representatives and only in the federal district courts. Section 10(1) is the only section of the entire 1947 Act dealing with the remedying of violations of Section 8(b)(4) with one exception not here relevant.*

It is difficult to conceive by what process of reasoning or rule of statutory construction it can be argued that Congress was not concerned with whether this carefully thought out plan for the prevention and remedying of alleged violations of Section 8(b)(4) could be avoided, and the further provisions for the assumption of jurisdiction by state agencies under the method provided in the proviso

* Section 303 of the Act confers upon any court, federal or state, of competent jurisdiction power to hear cases for damages inflicted by labor organizations who violate the provisions of Section 8(b)(4) of the Act. Since Section 303 deals specifically with actions for damages and not with actions for injunctions, it is not relevant here except as further indication of the careful way in which Congress has set forth remedies and forums, and except as an indication of the alternative relief provided for persons unable to apply privately for injunctions.

to Section 10(a) be disregarded; if Congress contemplated the assumption of jurisdiction by state courts contended for in the instant case, it would hardly have taken such pains to prescribe its own remedy or the conditions under which states could exercise jurisdiction or, in any event, would have added additional language to the 10(a) proviso clause, thoroughly indicating such intent. Surely, the language used by Congress speaks for itself and is conclusive that the Congressionally-prescribed remedies are exclusive and that states are to act only under the circumstances set forth under the 10(a) proviso clause.

Two other sections of the 1947 Act should be mentioned as indicative of the fact that when Congress desired states to assist in any phase of the administration or operation of the Act, it was careful expressly so to provide. Under Section 14(b) Congress gave the states power to prohibit union-security agreements altogether. The lawmakers explained their reason for this special provision as follows (House Report No. 245, 80th Cong., 1st Sess., p. 40):

"As under the present act, the power of the Board under the amended act in the matter of unfair labor practices is exclusive. This rule has necessitated a special provision . . . to give to the States a concurrent jurisdiction in respect of closed-shop and other union-security agreements."

Similarly, under Sections 202(c), 203(b) and 8(d)(3), Congress provided for the inclusion of state agencies in the mediation and conciliation of labor disputes by special language suitable to that end.

Given the statutory language and nothing more, it would seem clear that Congress has provided specific remedies for alleged violations of Section 8(b)(4), which remedies

¹ "Sec. 14(b). Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

are exclusive, and which would prevent state courts from issuing injunctions, preliminary or otherwise, to prevent such violations upon the application of private parties.

As indicated by the Fourth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2d) 183, at 186, what this Court said in respect to the Railway Labor Act in *General Committee v. Missouri, K. & T. R. Co.*, 320 U.S. 323, is equally applicable to the Labor-Management Relations Act of 1947; we quote its language by way of summary of our position here:

"On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (320 U.S. at 332.)

As before stated, the decision of the Alabama Supreme Court below relies heavily upon the fact that in the 1947 Act the Congress, in conferring jurisdiction upon the National Labor Relations Board, under Section 10(a) to remedy unfair labor practices, omitted the phrase "This power shall be exclusive," which appeared in the similar grant of jurisdiction under Section 10(a) of the 1935 Act. Any attempt thereby to infer that state courts have jurisdiction to grant temporary relief ignores the general structure of the Act, the careful framing of specific remedies for specific violations, and the express language in the proviso clause to Section 10(a), not appearing in the 1935 Act, under which Congress provided that jurisdiction to remedy the unfair practices can be exercised only under express agreement by the Board. These considerations, as held by the Fourth Circuit in the *Amazon Cotton Mill* case, 167 F.

(2d) at 187, in disposing of the contention that omission of the word "exclusive" is significant as showing an attempt to open the door to relief in the state courts, indicate that

"... a remedy in the courts not expressly given is not to be inferred; and especially is this true where Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task."

It is to be remembered that use of the word "exclusive" is not controlling in determining whether the enforcement machinery created by Congress precludes other remedies. See *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426.

Even if there were room for argument on the question, the report of the Conference Committee conclusively indicates that the reason for the omission of the phrase describing that the Board's power of enforcement shall be "exclusive" was to make accommodation for the two new specific grants of jurisdiction contained in the 1947 amendments under Sections 10(j), (k) and (l) and Section 303, namely, that of the districts courts to afford temporary relief and of all courts to entertain suits for damages. The Conference Committee (H.R. No. 510, June 8, 1947, 80th Cong., 1st Sess. 52) stated as follows:

"The House bill omitted from section 10(a) of the existing law the language providing that the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained

that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate amendment by retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." (Emphasis supplied.)

The Fourth Circuit in the *Amazon Cotton Mill* case, *supra*, at 187, relying on this committee report, as well as on the "clear meaning of the statute when its language is considered in light of existing law," stated in this respect as follows:

"The change in the statute upon which reliance is placed was clearly intended, not to vest the courts with general jurisdiction over unfair labor practices, but to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (l), section 208, and section 303, to which we have heretofore made reference, as well as the power in the Board, conferred by the proviso in section 10(a) to cede jurisdiction to state agencies in certain cases."

In the light of all the foregoing, it is respectfully submitted that in the field of remedy for alleged violations of the unfair labor provisions of the Taft-Hartley Act, most certainly as clearly as in the field of regulation of peaceful strikes for higher wages, "Congress occupied this field and closed it to state regulation." *International Union v. O'Brien*, 339 U.S. 454, at 457.

B. THE FACT THAT CONGRESS HAS SPECIFIED CERTAIN REMEDIES PRESUMES THAT IT HAS EXCLUDED ALL OTHERS.

Even if the language of the 1947 amendments was not as clear as it is in indicating congressional intent to make the remedies specified in the Act exclusive, nevertheless prin-

ciples of presumptive exclusion long followed by this Court would serve to preclude the granting of preliminary injunctive relief as attempted in the courts below. The rule of presumption was long ago pronounced in this Court in *Houston v. Moore*, 5 Wheat. 1, at 20, and has been followed by this Court in numerous cases subsequently decided. In the *Moore* case Mr. Justice Washington, writing for the full court, in speaking of the concurrency of federal and state law, stated that if they

"... correspond in every respect, then the latter is idle and inoperative; if they differ they must, in the nature of things, oppose each other, so far as they do differ. If the one imposes a certain punishment, for a certain offense, the presumption is, that this was deemed sufficient, and under all circumstances, the only proper one. If the other legislature imposes a different punishment, in kind or degree, I am at a loss to conceive, how they can both consist harmoniously together."

Mr. Justice Holmes classically rephrased this proposition in *Charleston & Carolina R.R. v. Varndale Co.*, 237 U.S. 597, at 604, as follows:

"When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

See also *Missouri Pacific R.R. Co. v. Porter*, 273 U.S. 341, at 345.

The Labor-Management Relations Act reflected the considered judgment of Congress not only as to what substance and form regulation of certain defined labor practices should take but the extent and scope of the remedy for violations and of the forum in which relief could be sought. In it, Congress went so far as it thought right. Alabama has added another remedy and an additional type of relief and a new forum. This it cannot do if the integrity of the federal legislative process is to remain.

A corollary to the usual role of presumption which is directly applicable to the instant case has been recognized by at least four members of this Court dissenting in *California v. Zook*, 336 U.S. 725. That corollary is that where Congress has entered a field and made particular regulations therein and afforded particular remedies or punishment, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. The Labor-Management Relations Act, of course, contains no such express consent and, therefore, under that doctrine the state action must fall. See 336 U.S. at 757. The *Zook* case involved concurrent state and federal statutes prohibiting interstate transportation without Interstate Commerce Commission permit, the state statute carrying with it a greater penalty. Although the state statute was upheld in a five-to-four decision, the Court found that the federal Act there involved, unlike the Labor Relations Act in the present case, carried with it in its language no indication of an intent to override the state laws and that, unlike the present case, there existed no conflict in terms of application, the Court concluding that:

"In this case the factors indicating exclusion of state laws are of no consequence in the light of the small number of local regulations and the state's normal power to enforce safety and good-faith requirements for the use of its own highways."

C. CONSIDERATIONS OF RATIONALE AND POLICY INDICATE CONGRESSIONAL INTENT TO EXCLUDE INJUNCTIVE REMEDIES IN THE STATE COURTS.

Even though the Act were silent or ambiguous as to Congressional intent in respect to remedy or forum, it is a fair inference, based on policy considerations and on the logic of the situation—on what Congress *must* have intended—that Congress excluded relief or remedy in the state courts and confined remedies to those specified in the Act. As before indicated, when the Act is considered as a whole, in all

its comprehensiveness and detail, and with its exact delineation of remedies, it is certainly not reasonable to attribute an intent to Congress to open wide the use of injunctive processes by private litigants in thousands of state courts in the forty-eight states for the prevention of alleged violations of the unfair practice provisions of the Act. If "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft Corp. v. Hirsch*, 331 U.S. 752, at 767) were, as in the case of other federal administrative regulations, to be considered a desirable end, most assuredly to confer on private persons the right to seek injunctions for alleged violations in whatever court, state or federal, they could obtain service, would make that end quite unobtainable. Litigants would be prone to seek that forum which they believed was most favorably inclined to their cause. The result would be a "crazy quilt of diversity"; to impute an intent to permit or tolerate such a result would indeed be "a strained and strange way of interpreting the mind of Congress." (See Justice Frankfurter, dissenting in *California v. Zook*, 336 U.S. at 740.)

Judge Parker, in the *Amazon Cotton Mill case*, 167 F. (2d) at 190, pictured the consequence of allowing private parties to sue for injunctions in the following words:

"If labor unions are permitted to invoke the injunctive process of the courts under the Act, so also are employers. If they may invoke jurisdiction of the courts where they themselves have appealed to the Labor Board, they may invoke it where their adversaries have appealed to that Board. It would follow, therefore, that upon the beginning of a proceeding before either the Board or a court, the party proceeded against could, and probably would, begin a proceeding in the other tribunal. More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that

would necessarily result. Certainly the statute should not be given an interpretation which would lead to such consequences."

V Judge Parker was presumably speaking of the two hundred federal district courts; the confusion he predicts would be compounded a thousand times were jurisdiction to enjoin unfair labor practices extended to the state courts as well.

Further, were state courts permitted jurisdiction to remedy unfair labor practices, the National Labor Relations Board would be reduced to a state of idle impotency. Few private litigants would bother with the expert processes of the Board when they could go into a friendly state court and enjoin unfair labor practices. Thus, the statutory provisions of Sections 10(j) and 10(l), which provide the Board with authority to enjoin unfair practices, would be reduced to nullities. Congress could not have intended such carefully studied statutory provisions to lie dormant.

Even if we were to rely on only what Congress must have intended and disregard the statutory language or the rule of presumption, the inevitable conclusion is that the only way in which preliminary injunctive relief can be obtained is in the manner specifically provided in the Act; otherwise, enforcement of the Act would be subject to the eroding process of conflicting judicial review at thousands of local state levels.

A final policy consideration indicating that Congress must have intended to exclude state action is this. To permit private parties to apply for preliminary relief in the state courts would, as it has in the present case, create a direct conflict with the procedures spelled out in the federal Act. It may well be that, as stated by Justice Frankfurter, dissenting in *California v. Zook*, 336 U.S. at 740, "talk about 'conflict' as a basis for displacing State by Federal enactment is relevant only in situations where Congress has chosen to 'circumscribe its regulation and occupy only a limited field,' while State regulation is 'outside that limited field,' and yet an inference of negation of State action

sought to be drawn," and that therefore such talk is not relevant in the present case where the claim is that the state action is inside the limited field occupied by Congress. It is respectfully submitted, however, that where, as here, physical conflict exists within the very field, mention of such conflict is relevant at least as indicating anomalies or absurdities of result created by any claim that the state and federal procedures can exist side by side. Regardless of what the Justices of this Court may have had in mind from time to time when they spoke of "preemption" or "conflict" in disputes between federal and state governments under the Supremacy Clause of the constitution, it is surely significant here that the will of Congress so carefully laid out in Sections 10(j) and (l) that cases of alleged violations of the unfair practice sections of the Act be screened by the tribunal making the ultimate decision before resort is had to the courts for temporary relief from alleged irreparable injury is directly flaunted, as in the present case where a private party, at its own option, has chosen to avoid the entire administrative process provided by Congress and has obtained private injunctive relief from its own selected tribunal. Call it "conflict," call it a "superimposition," or call it "preemption," it remains obvious that the two procedures "cannot be reconciled or consistently stand together" (Chief Justice Hughes in *Kelly v. Washington*, 302 U.S. 1, at 10) if the integrity of the federal process is to remain and carefully chosen policy in respect to injunctive relief is to be respected. These policy considerations would indicate that state procedures be voided. See *Hill v. Florida*, *supra*.

D. THE LEGISLATIVE HISTORY OF THE 1947 ACT DISCLOSES A DIRECT INTENT TO FORECLOSE ALL REMEDIES OTHER THAN THOSE PROVIDED FOR IN THE ACT, AND SPECIFICALLY TO FORECLOSE TEMPORARY RELIEF IN THE STATE COURTS.

The conclusion that Congress intended to foreclose all remedies other than those set forth in the 1947 amendments,

which has been heretofore gathered from the language of the Act itself, from allowable legal presumption, and from fair inference, is strongly supported by the legislative history of the Act and, in particular, by the history of those sections providing for relief from the alleged violations of the secondary boycott provisions of the Act which are the subject of the instant litigation. This history shows that Congress expressly considered the problem of scope of remedy, of whether the exclusive grant of jurisdiction to the National Labor Relations Board contained in the 1935 Act should be continued and, in particular, of whether temporary relief against violations should be obtainable in any court of competent jurisdiction so as to provide a remedy for whatever irreparable injury might be sustained if the Board processes should occasion delay. This history is, of course, particularly relevant as a complete answer to the principal thesis of the Alabama court and other courts^{*} which have thus far authorized the granting of temporary relief in a manner other than that provided for in the Act, namely, that Congress could not possibly have intended to usurp the state courts of their traditional function of protecting litigants through the injunctive process against the hazards of irreparable injury. The legislative history shows clearly that Congress specifically pondered this problem, weighed the possibility of potential abuses of the injunctive process against the possibility of potential damages to private individuals suffering irreparable injuries because of possible delays and decided in favor of "procedures under the National Labor Relations Act." (93 Cong. Rec. 5041.) Because of the clarity of expressions of Congressional opinion on this subject, and because they conclusively dispose of the principal argument of those advocating resort to tribunals other than those specified under the Act itself for the purpose of obtaining temporary relief against

^{*} See *Oregon ex rel Tidewater-Shaver Barge Lines v. Dobson*, 30 LRRM 2345, (Ore. Supreme Ct, June 4, 1952).

alleged irreparable injury, the most pertinent portions of the debates and committee reports on this particular subject are set forth below in full.

It was Senator Morse who proposed, under Section 10(j), that temporary relief for alleged violations be obtainable only through the Board. Commenting on his proposal, Senator Morse stated as follows (93 Cong. Rec. 1912):

"My proposal would in no way impair the legitimate rights of labor under the Norris-LaGuardia Act and the Clayton Act [15 U.S.C.A. §12, at seq.], since I do not propose that employers be allowed to obtain injunctions against labor or that unions and their members be subjected to the drastic civil and criminal penalties that could be applied in days gone by."

Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., p. 8 explained Sections 10(j) and 10(l) as follows:

"After a careful consideration of the evidence and proposals before us, the committee has concluded that five specific practices by labor organizations and their agents, affecting commerce, should be defined as unfair labor practices. Because of the nature of certain of these practices, especially jurisdictional disputes, and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available *under the National Labor Relations Act* in order adequately to protect the public welfare which is inextricably involved in labor disputes.

"Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that the *Board, acting in the public interest and not in vindication of purely private rights*, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such

relief in the case of strikes and boycotts defined as unfair labor practices." (Emphasis supplied.)

Senators Taft, Ball, Donnell and Jenner issued a supplemental report setting forth objections to the provisions of the bill giving the Board exclusive power to obtain temporary relief for alleged violations of the unfair practice sections of the Act. The supplemental report (Senate Rep. No. 105 on S. 1126, Supplemental Views, 1 Legislative History of LMRA, 1947, Gov. Printing Office, 1948, p. 460) states as follows:

"An amendment reinserting in the bill a section making secondary boycotts and jurisdictional strikes unlawful and providing for direct suits in the courts by any injured party. The committee bill admits that such boycotts and strikes are improper, but it only proposes to make them unfair labor practices. This means that appeal must be made . . . to the National Labor Relations Board. The bill does provide that, on petition of the NLRB regional attorney, the Board may obtain a temporary injunction from a court while it is conducting a hearing on the question whether the strike is an unfair labor practice or not. If it finds that it is, it then may issue a cease and desist order against such a strike and later ask to have this enforced by the court. In our opinion, this is a weak and uncertain remedy for those injured by clearly illegal strikes. It depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party. The facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure. In addition to that, the best estimate of the time lag between the filing of charges with the NLRB and its obtaining of a temporary injunction is not less than two weeks to a month.

" . . . There will only be a satisfactory remedy if he can go to his local court and obtain an injunction, first temporary and then permanent, against interference of this kind."

In line with these objections, Senator Ball then proposed an amendment which was designed to permit employers to obtain injunctions in district courts against jurisdictional strikes and secondary boycotts. The Ball amendment read as follows (93 Cong. Rec. 4887):

“(b) The district courts of the United States shall have jurisdiction in proceedings instituted by or on behalf of the United States, *or by any party* suffering loss or damage or threatened with loss or damage by reason of any violation of subsection (a), to prevent and restrain violations of such subsection. It shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings to prevent and restrain violations of such subsection.” (Emphasis supplied.)

Senator H. Alexander Smith, of New Jersey, attached a supplemental statement at the end of the committee report, expressing his opposition to this amendment (Senate Report No. 105 on S. 1126, Supplemental Views) as follows:

“I am opposed to this amendment (Amendment four proposed by the other Senators). While I am in entire accord that there can be no defense of secondary boycotts and jurisdictional strikes, I feel that the reported bill treating these matters as unfair labor practices is the preferable way to deal with them—putting the responsibility on the National Labor Relations Board. Furthermore, I do not favor the opening up of the Norris-LaGuardia Anti-Injunction Act except on petition of the Government. By treating these evils as unfair labor practices, the use of the injunction is given to the National Labor Relations Board and is not open to abuse by individual employers. At least we should experiment with this procedure before adopting the more severe remedies.”

Senator Ives of New York expressed his opposition to this amendment as follows (93 Cong. Rec. 5041):

“It has been pointed out that possibly the unfair labor practice procedure might not be so effective as the direct injunction obtained by the employer. To

some extent, perhaps, it would not be. Perhaps there would not be the immediate action obtainable by injunction, but by and large, the entire suggested procedure is intended to deal with the National Labor Relations Act. The provisions with respect to jurisdictional disputes and with respect to secondary boycotts, which are met by a statutory denial, deal fundamentally with the National Labor Relations Act. In effect, such boycotts and strikes would constitute violation of that act, if indeed they would not actually violate other laws. The remedy should be found in procedures under the National Labor Relations Act. So I say that if there should be a slight delay—and I do not think there would be, once the system is established—but if there should be a slight delay, the right approach is through the provisions of the committee bill without opening the door to abuses which formerly existed and which resulted in the passage of the Norris-LaGuardia Act. I have stated my second reason for opposing the amendment offered by the Senator from Minnesota."

Senator Morse voiced his objections as follows (93 Cong. Rec. 4841):

"It has been my consistent endeavor while this legislation has been under discussion to vest determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor problems. I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the complexity of this field. Labor problems are complex, as complex, indeed, as our entire social structure, since the great mass of our people are workers. It is a field which has been growing ever more complex as our society has come to depend upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

"I am confident, despite the high regard in which I hold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to

grant to the district courts, upon application of the Board; an interim power to maintain the status quo pending resolution of the problem by the body which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have some knowledge of the field, but all of whom can certainly not pretend to be experts...

"... I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy."

In the course of debate over the Ball amendment, Senator Ball answered, "Yes, of course," to Senator Ellender's question whether or not it was true in respect to the bill itself, as distinguished from Ball's amendment, that "all of the unfair labor practices covered by the bill against management or labor are processed through the Board." (93 Cong. Rec. 5040.) The Ball amendment was put to vote and defeated 63-28 (93rd Cong. Rec. 4847).

Apparently as a compromise, Senator Taft then introduced an amendment authorizing suits for damages caused by jurisdictional strikes and secondary boycotts (93 Cong. Rec. 4843), which was enacted as Section 303 of the Act (93 Cong. Rec. 4874). In answer to a clarification requested by Senator Morse as to whether the Taft proposal might give rise to the granting of injunctive relief in that type of cases, Senator Taft replied (93 Cong. Rec. 5074):

"Let me say in reply to the Senator or anyone else who makes the same argument, that that is not the intention of the author of the amendment. It is not his belief as to the effect of it. It is not the advice of coun-

sel to the committee. Under those circumstances I do not believe that any court would construe the amendment along the lines suggested by the Senator from Oregon."

What is significant about the foregoing legislative history is not only the clear indication of intent to limit remedies to those specifically provided for in the Act, but also the fact that none of the legislators ever even so much as assumed that the express provisions affording remedies set forth in the Act would be anything but exclusive. As stated by Judge Parker in the *Amazon Cotton Mill Co.* case, 167 Fed. (2d) at 189, in commenting upon this legislative history:

"It is hardly thinkable that, if the effect of the Labor Management Relations Act was to make a fundamental change in the jurisdiction to deal with unfair labor practices, this important fact would not have dawned upon some member of the House or the Senate and have been referred to in the course of the lengthy debate of a measure that was passed over a Presidential veto. That no such suggestion was made gives ample support to the interpretation which, as we have already indicated, we should place upon the text of the act if the history of its passage and the Congressional debates were not available to us."

That Court further stated in respect to this history, at p. 188:

"There is nothing in the history of the act, the reports of committees or the debates in Congress, which even vaguely supports the contention that its effect was to vest jurisdiction in the District Courts to grant relief against unfair labor practices. Everything said by anyone remotely bearing on the matter is to the contrary."

It would serve no purpose to rehearse before this Court the justifications and policy considerations which support the determination of Congress, as a means of eliminating any possibility of a revival of the abuses of the injunctive process which gave rise to the Norris-LaGuardia Act (see

93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess., 56), to subject injunctive relief to a screening process by a responsible and expert federal tribunal, even at the risk of subjecting employers to whatever irreparable injury might be occasioned by the necessity to resort exclusively to the procedures provided under the Act. Such considerations, like those advanced by the Alabama and Oregon courts as arguments for permitting preliminary injunctive relief by private individuals, are best addressed to the Congress which alone has the power to make the determination of an appropriate remedy for enforcement of its own regulations in the field of interstate commerce. Cf. *Lincoln Federal Labor Union No. 19129, et al. v. Northwestern Iron and Metal Co., et al.*, 335 U.S. 525.

• III •

Judicial authority amply supports the position that Congress, in the 1947 amendments, limited the remedies to those specifically provided for in the act.

The language of the 1947 Act, its legislative history, and proper inference all combine to give an affirmative answer to the question: "Has Congress spoken so as to silence the states?" (Frankfurter, J., dissenting in *Hill v. Florida*, 325 U.S. at 547.) Judicial authority in support of the position that Congress has preempted the field of remedy for violations of the Act, so as to preclude injunctive relief by state courts, is not lacking. The decisions of this Court in *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U.S. 953; *California v. Zook*, *supra*; *Amalgamated Utility Workers v. Consolidated Edison Co.*, *supra*; *Amalgamated Association v. Wisconsin Employment Relations Board*, *supra*, have already been adverted to, as has the decision of the Fourth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union*, *supra*. While the *Amazon* case involved a determination of whether fed-

eral district as distinguished from state courts have jurisdiction to issue injunctive relief at the request of private parties, the principles involved are identical, and the reasoning of Judge Parker is directly applicable. The *Plankinton Packing Co.* case, *supra*, warrants additional mention not only because of the close parallel between that case and the present one, but also because all members of this Court deemed so obvious as to require no discussion the proposition that the federal Act had occupied the field as to those rights, obligations and remedies specifically there set forth so as to exclude even concomitant state action. In a *per curiam* decision, without opinion, this Court held in *Plankinton* that, once Congress had established specific rights and obligations in the field of industrial relations affecting commerce (in that case, the right of employees to refrain from joining labor organizations, and the obligation of employers to refrain from interfering with employees in the exercise of this right) and had afforded specific remedies for breach thereof (through the National Labor Relations Board), state agencies were precluded from exercising even concurrent jurisdiction even where no conflict might exist. As stated by this Court when in *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. f.n. 12, p. 390, it had occasion to discuss *Plankinton*:

"Since the NLRB was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of state regulation. *Plankinton* and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in §7."

If, in the *Plankinton* case the action of the Wisconsin Board was stricken because the state had "superimposed upon federal outlawry of conduct as an 'unfair labor practice' its own finding of unfairness" (*Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. at 401), then also must the action of the Alabama court in

superseding or supplanting by its own judgment of what constituted an unfair labor practice the judgment of both the Board acting in its preliminary screening capacity under Section 10(1) and the federal district court having jurisdiction to issue temporary relief under that section. The occupation of the field by federal authority is equally clear in both cases. Surely, if "states may not regulate in respect to rights guaranteed by Congress in §7," by the same token states may not remedy in respect to remedies prescribed by Congress in Section 10. It is submitted that *Plankinton* and the *Bethlehem Steel Co.* and *O'Brien* cases, *supra*, which preceded it are conclusive in the instant case.

Also directly in point is dictum in the earlier case of *California v. Zook*, 336 U.S. at 731, where this Court gave explicit recognition to the proposition that state attempts to provide remedies and enforcement mechanisms in addition to those provided for in the Taft-Hartley Act are invalid even though they might be helpful to the federal Board:

"And when state enforcement mechanism so helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U.S.C.A. §160(a), 9 FCA Title 29, §160(a)."

It is significant also that courts of last resort in the states of California, New York and Minnesota have held directly contrary to the holding below; the following cases all hold that state courts have no jurisdiction to grant interim or other injunctive relief for alleged violations of the Taft-Hartley Act: *Gerry v. Superior Court*, 32 Cal. (2d) 119, 194 P. (2d) 689; *Ex Parte Di Silva*, 33 Cal. (2d) 76, 199 P. (2d) 6; *Costaro v. Simons*, 277 App. Div. 1045, rev'd 302 N.Y. 318, 98 N.E. (2d) 454; *Ryan v. Simons*, 277 App. Div. 1000, 100 N.Y.S. (2d) 18, aff'd 302 N.Y. 742, certiorari denied, 342 U.S. 897; *Norris Grain Co. v. Seafarers Int'l Union*, 232 Minn. 91, 46 N.W. (2d) 94. Furthermore, the Courts of Appeal for the Eighth and Ninth Circuits, as well as various of the federal district courts have indicated

sharp disagreement with the concept that remedies other than those specifically provided for in the federal Act are available: *See Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. (2d) 902 (C.A.8); *Schatte v. Theatrical Stage Employees*, 182 F. (2d) 158 (C.A.9), certiorari denied, 340 U.S. 827; *California Association v. Building Trades Council*, 178 F. (2d) 175 (C.A.9); *I.L.U. v. Sunset Line & Twine Co.*, 77 F. Supp. 119 (N.D. Cal.); *United Packing House Workers v. Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill.); *Textile Workers Union v. Berryton Mills*, 28 LRRM 2540 (N.D. Ga., July 23, 1951); *Born v. Cease*, 101 F. Supp. 473 (D. Alaska); compare *Reavis v. I.B.E.W.*, 101 F. Supp. 542 (N.D. Tex.).

Assuredly in this case, if any, "This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation." (*Amalgamated Association v. Wisconsin Employment Relations Board*, *supra*, at 398.)

IV

The various arguments advanced by respondent in the Court below to support state court jurisdiction to grant temporary relief are without merit.

What has been said heretofore in this brief serves as an answer, at least for the most part, to the various contentions heretofore made by the respondent in this case and to the arguments contained in the decision of the court below. By way of summary:

(1) The principal argument below—that by leaving out the word "exclusive" in Section 10(a), Congress intended to open the door to common law remedies in the state courts—is answered not only by the framework and setting of the Act itself, together with the express language in the proviso to Section 10(a) which specifies an intent to permit outside jurisdiction only in a limited manner and only

under express agreement of the Board, but also by the legislative history which indicates specifically an intent to confine remedies to those mentioned in the Act, the word "exclusive" being removed to accommodate additional remedies not appearing in the predecessor Act.

(2) The argument that Congress could not have intended to eliminate, even though it had the power so to do, so traditional and important a remedy as that of injunction against admitted irreparable injury without very affirmatively so indicating ignores the fact that such affirmative expression of intent does exist both in the language of the Act and very specifically in its legislative history and that, in any event, whether relief against alleged irreparable injury caused by violations of federally-created obligations should exist is for Congress alone to decide, so that any arguments pointing to the advisability of allowance for such relief should be addressed to Congress and not to this Court.

Similar pleas for the necessity of affording a remedy for alleged irreparable injuries, even though they were in addition to remedies specifically provided for by Congress, were made in respect to the National Labor Relations Act of 1935. This Court, speaking through Justice Brandeis in *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, at 50, answered such contentions as follows:

"The Corporation contends that, since it denies that interstate or foreign commerce is involved and claims that a hearing would subject it to irreparable damage, rights guaranteed by the Federal Constitution will be denied unless it be held that the District Court has jurisdiction to enjoin the holding of a hearing by the Board. So to hold would, as the Government insists, in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance. The contention is at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened

injury until the prescribed administrative remedy has been exhausted. That rule has been repeatedly acted on in cases where, as here, the contention is made that the administrative body lacked power over the subject matter.

"Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact."

(3) The argument tentatively advanced by respondent but not appearing in the decision of the court below—that the injunction was issued to protect rights granted under state statute rather than federal law so as to bring the case within *International Brotherhood v. Hanke*, 339 U.S. 470, and *Building Service Employees v. Gazzam*, 339 U.S. 532—is answered, first, by the fact that, as stated in the principal decision of the court below, "the allegations of the bill itself show that reliance is had on the National Labor Relations Act, as amended, for the purpose of determining whether or not the plaintiff is entitled to an injunction" (R. 41); and second, by the fact that the state law allegedly invoked is by respondent's own admission (respondent's brief in opposition to certiorari, pp. 8-9) made violative of the federal Act as well, thus bringing respondent's case within the *Plankinton* case, *supra*.

(4) The argument that the activity complained of "does not impede the flow of commerce . . . but incidentally affects commerce" (R. 43), and that, therefore, the Board might not have jurisdiction or may not exercise jurisdiction, can be answered in several ways.

First, Congress itself made no distinction between what might affect commerce and what might impede its flow; the Act simply (Section 10(a)) states that "The Board is

empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) *affecting commerce*." (Emphasis supplied.) The term "affecting commerce" is defined in Section 2(7) as meaning "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." By this, "Congress drew no distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under The Commerce Clause." *Amalgamated Association v. Wisconsin Employment Relations Board, supra*. Lacking express Congressional language indicating an intent to permit concurrent jurisdiction in some undefined borderline area, the state courts could have no more jurisdiction over such borderline area than over any other area covered by the Act. If the Act applies and the Labor Board has jurisdiction at all, then state courts are excluded. On the other hand, if the Board had no jurisdiction and the federal Act no application, then we would have a different case both before this Court and the court below, and all the argument as to Congressional intent would be irrelevant.

Second, respondent's complaint, as well as its affidavits in support of its application for temporary injunction (R. 22, 30) indicate quite clearly that commerce would be substantially affected. (See Board's Sixth Annual Report, p. 16.) Thus, on the basis of the only record before the court below it would have been unable to make any finding that commerce was not in any way affected, nor did it make any such determination.

Third, if the court below intended to say that the Board might, in its discretion, refuse to exercise its admitted jurisdiction because the effect on commerce was not substantial, or for some administrative reason, to this it can be answered, first, that no opportunity was given the Board to exercise such discretion so that the filing of charges by

respondent invoking Board jurisdiction would, at the very least, seem an indispensable prerequisite to even attempting to secure relief before the state court on the ground that the Board's facilities were inadequate. As the case presently stands, the question whether the Board would or would not grant respondent any relief is a matter of pure conjecture and speculation. Further, to argue for some residual power in the states to grant temporary relief in a hardship or other type of case is to ignore the thesis underlying this entire matter, namely, that Congress has chosen to exclude all state action other than that specifically granted or authorized under the Act itself. Accordingly, even had respondent made application to the Board, and the Board for administrative reasons had refused to process the case, respondent nevertheless could have no standing in the courts below. It must be remembered that it is federally-created rights and obligations that we are talking about, not those existing by virtue of some state statute or state common law.⁹ Congress has decreed in Taft-Hartley, in the exercise of its power under the commerce clause and under the Supremacy Clause of the federal constitution, that states may exercise jurisdiction to grant remedies or relief in respect to these rights and obligations only under the limited circumstances and under the limited conditions set forth in the proviso clause to Section 10(a). These conditions have not been met in the present case—no agreement ceding jurisdiction has been entered into between the National Labor Relations Board and any state agency in Alabama—and accordingly the Alabama courts could have no jurisdiction to grant respondents relief whatever the assertions as to hardship might be.

⁹ Of course, even though a state statute or state common law were involved, to the extent that such statute or law paralleled the federal law, the principles of *Plankinton Company, supra*, would be applicable, and to the extent that there was conflict the principles of *International Union v. O'Brien, supra*, would apply, so that in either instance attempts to enforce or obtain injunctive relief under such statute or law must fail.

CONCLUSION

Whatever the test or method of approach utilized, it is clear that Congress, in the 1947 Amendments to the Wagner Act, intended to continue to confine remedies for alleged violations of the Act to those specified in the Act, as amended, and has intended to preclude the states from exercising any jurisdiction to enforce the provisions of the Act, whether by temporary injunction or otherwise, except under certain conditions and circumstances not present in this case. Congress having preempted the field, and the action of the state court below in granting temporary relief at the request of a private litigant being in direct conflict with the procedures outlined in the federal Act, the action of the courts below in granting temporary relief must be nullified and those courts held to be without jurisdiction in the premises. Accordingly, it is respectfully requested that the decision of the Supreme Court of Alabama herein be reversed.

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No. 43

In the Supreme Court of the United States

OCTOBER TERM, 1952

**MONTGOMERY BUILDING AND CONSTRUCTION TRADES
COUNCIL, ET AL., PETITIONERS**

v.

LEDRETTIER ELECTION COMPANY, INC.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF ALABAMA**

**BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD AS AMICUS CURIAE**

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 43

**MONTGOMERY BUILDING AND CONSTRUCTION TRADES
COUNCIL, ET AL., PETITIONERS**

v.

LEDBETTER ERECTION COMPANY, INC.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF ALABAMA**

**BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD AS AMICUS CURIAE**

OPINIONS BELOW

The initial opinion of the Supreme Court of Alabama (R. 38-54) is reported at 57 So. 2d 112, and its supplemental opinion on rehearing (R. 54-56) is reported at 57 So. 2d 121. The decisions of the Circuit Court for Montgomery County, Alabama, granting an injunction (R. 9) and refusing to dissolve it (R. 33) are unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257. The petition for a writ of certiorari was granted on June 2, 1952, 343 U.S. 962.¹

QUESTION PRESENTED

Whether, at the suit of an employer, a state court may issue a temporary injunction against violations of Section 8(b)(4)(A) and (B) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, before amendment (49 Stat. 449, 29 U.S.C. 151, *et seq.*), and after amendment (61 Stat. 136, 29 U.S.C. Supp. V, 141, *et seq.*), are set forth in the Appendix, *infra*, pp. 46-64.

STATEMENT

On October 20, 1950, Ledbetter Erection Company filed a complaint in an Alabama Circuit Court requesting an injunction against the Montgomery Building & Construction Trades Council and others, petitioners herein, for conduct alleged to violate Section 8(b)(4) of the National Labor Relations Act (R. 2-9). The allegations of the complaint may be summarized as follows:

Bear Brothers, a general contractor, entered into an agreement for the construction of a multi-story,

Our memorandum supporting the petition for certiorari discussed, at pp. 19-21, the reasons favoring the view that the judgment of the court below is final within the meaning of 28 U. S. C. 1257, and this discussion is not repeated here.

124 rental unit apartment house in Montgomery, Alabama (R. 3, 6). Bear Brothers subcontracted to Ledbetter the job of erecting and riveting the structural steel used in the construction of the apartment house (R. 3). Bear Brothers' employees were unorganized; Ledbetter's employees operated under a union-shop contract (R. 3, 4). The Trades Council placed a picket line around the construction project, which, the complaint alleged, induced Ledbetter's employees "to engage in a concerted refusal to perform services for the object of forcing or requiring another employer [Bear Brothers] to recognize or bargain with the labor organization" which had not been certified by the National Labor Relations Board, "and to force or to require complainant Ledbetter Erection Company, Inc., to cease doing business with Bear Brothers, Inc." (R. 5). This conduct, it was alleged, is "a violation of Section 8(b)(4) of the National Labor Relations Act as amended and amounts to secondary picketing as therein defined and prohibited" (R. 5).²

The complaint prayed for a temporary injunction, to be made permanent on final hearing, restraining the Trades Council from (1) picketing the construction job, (2) engaging in any unfair labor practice as defined by the Labor Management Relations Act, (3) inducing the employees of Led-

² While the picket line was alleged simply to violate Section 8 (b) (4) of the Act, it is apparent that the wording of the complaint further limits the allegations to 8 (b) (4) (A) and (B). No charge alleging that this conduct constituted an unfair labor practice was ever filed with the National Labor Relations Board.

better to engage in a concerted refusal to perform services for the purpose of forcing Bear Brothers to recognize an uncertified union as representative, (4) inducing the employees of Ledbetter to engage in a concerted refusal to perform any services in order to force Ledbetter to cease doing business with Bear Brothers, and (5) for other relief (R. 8-9). The complaint also requested that on final hearing a judgment for damages be rendered "by reason of such unlawful picketing in violation of Section 303 of the Labor Management Relations Act" (R. 9).

On consideration of the complaint, a temporary injunction was granted in the identical terms requested (R. 9-11). The Trades Council moved to dissolve the injunction because the relief requested was within the exclusive authority of the National Labor Relations Board to grant and the State court was therefore without jurisdiction (R. 19-21). Thereafter, in support of the complaint, an affidavit was filed by the vice president of Bear Brothers attesting (R. 22):³

³ In addition to its motion to dissolve the injunction, the Trades Council had filed an answer to the complaint (R. 14-18), in which it alleged that "the erection of the building is entirely an intrastate job and the National Labor Relations Board would have no jurisdiction over the operation of said job" (R. 17). The quoted part of the affidavit filed by the vice president of Bear Brothers, as well as the quoted part of the affidavit filed by the vice president of Ledbetter (*infra*, p. 5), is evidently in response to this allegation and is designed to show the interstate ramifications of the construction project. At the hearing on its motion to dissolve the injunction, the Trades Council withdrew its answer and relied entirely on its challenge to the jurisdiction of the State court (R. 33, 41).

that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio, plaster from Georgia, Virginia, and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce.

Another affidavit, filed by the vice president of Ledbetter in support of the complaint, alleged that heavy equipment, valued at \$25,000, which was being used on the project "has been scheduled for work on other jobs * * * out of the State of Alabama, which jobs are now being delayed because of the delay of work in Montgomery, caused by the picket line" (R. 30).

The motion to dissolve the injunction was denied

by the Alabama Circuit Court (R. 33), and, on appeal to the Alabama Supreme Court from the denial of the motion, the judgment of the lower court was affirmed (R. 56-58). The Alabama Supreme Court sustained the continuance of the injunction on the ground that, as alleged in the complaint (*supra*, pp. 2-3), the Trades Council's conduct was in violation of Section 8(b)(4)(A) and (B) of the National Labor Relations Act.¹ Distinguishing *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, and *Automobile Workers v. O'Brien*, 339 U. S. 454, because those cases pertained to enforcement of state legislation inconsistent with the National Act (R. 50-51, 52-53), the court held that this case is different because the claim here asserted by the employer rests on "a right which the Labor Management Act has conferred upon him" (R. 51). Since the right it adjudicated in this case flows from the National Act, and not from State law, the court below stated that the only issue is "whether or not the Labor

¹ The complaint also invoked Sections 54 and 57, Title 14, Code of Alabama (1940) (R. 7). These provisions, which are not relied upon, or even mentioned, by the court below, declare, respectively, that:

"Two or more persons who, without a just cause or legal excuse, for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

"Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other person, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor."

Management Act furnishes the exclusive remedy for its enforcement" (R. 51). The court concluded that "it was not the intention of Congress to make the administrative remedy exclusive in respect to all unfair practices affecting commerce" (R. 48), but that State courts have jurisdiction to vindicate, through the injunctive process at the suit of private parties, rights conferred by the National Act where irreparable injury is shown and the administrative remedy is inadequate.

The court below reasoned that "when the National Congress within its constitutional power passes an act conferring a right and providing a remedy, such remedy so provided is not ordinarily exclusive, thereby preventing such other remedies as may be available to obtain its benefits under state law then existing" (R. 44-45). Accordingly, "when commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the State court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the State court in that respect" (R. 45). Such clear exclusion the court below continued, was evinced by the Act before its amendment, for in empowering the Board to redress unfair labor practices, Section 10 (a) of the National Act then read that this "power shall be exclusive"; but the word "exclusive" was deleted by the amendment to the Act, and this deletion "serves to eliminate that feature of the original act which excluded all courts from exercising in-

junctive jurisdiction and limited all jurisdiction to the Board exclusively" (R. 49, 45-49).

For the present the court below apparently limited its holding to permitting "a state court to enjoin an unfair labor practice by a labor organization under Section 8 (b) (4) and Section 303, * * * which does not impede the flow of commerce, but which incidentally affects commerce" (R. 43, 48, 50, 51, 53). In addition, in confining its decision to the situation where the remedy before the Board is inadequate, the court held the remedy before the Board to be inadequate in the "special circumstances" of an uncontroverted allegation of irreparable injury, "augmented by the necessary time of the Board in making the preliminary investigation, and subject to a possibility that the Board will not take jurisdiction on account of the small amount of influence the transaction has on the flow of interstate commerce" (R. 55).

SUMMARY OF ARGUMENT

As before its amendment, so now, the procedure set forth in the National Labor Relations Act for enforcing the public rights it confers is exclusive. This is the conclusion of the courts of last resort of California, Connecticut, Minnesota, and New York, and of lower courts in other States. It is similarly the conclusion of the United States Courts of Appeals for the Fourth, Eighth, and Ninth Circuits, and of numerous federal district courts.

Before amendment of the National Labor Rela-

tions Act, it was settled that the statutory procedure was exclusive. The same essential scheme for unitary enforcement through the Board was retained in the amended Act. In supplementing the remedies available under the original Act, Congress did not open the door to extra-statutory remedies. Because of recognition that "appeal must be made * * * to the National Labor Relations Board" and that obtaining relief "depends upon the decision of the National Labor-Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party," a minority of the Senate Labor Committee proposed that, with respect to 8 (b) (4) violations only, private parties be allowed direct recourse to federal district courts for injunctions under a procedure substantially freed from the restrictions of the Norris-LaGuardia Act. S. Rep. No. 105, 80th Cong., 1st Sess., 54-56. After much discussion, this proposal was voted down, 93 Cong. Rec. 4847. It was rejected because enforcement was deemed more suitably entrusted to administrative processes exclusively controlled by a specialized agency in which precipitate action would be guarded against by preliminary investigation; it was also feared that private recourse to injunctive relief uncontrolled by the safeguards of the Norris-LaGuardia Act would reintroduce familiar abuses. 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess., 56.

Congress therefore retained the "administrative law approach" and rejected the "so-called court approach." 93 Cong. Rec. 4132.

The elimination of the word "exclusive" by the amendment to Section 10(a) of the National Act, in defining the power of the Board, does not, as the court below believes, have the purpose of permitting recourse to extra-statutory procedures. First, as the House Conferees explained, because of the amendment's new "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in a federal district court pending proceedings before the Board, and because of "provisions making unions suable" for money damages for conduct condemned by Section 8 (b) (4) as unfair labor practices, it was thought no longer appropriate to describe the Board's power as wholly exclusive. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 52. It was for this reason alone that the word "exclusive" was deleted. Second, while deleting the word "exclusive," Congress also added a proviso to Section 10 (a) of the Act authorizing the Board to "cede" jurisdiction to a state agency which, among other requirements, has a statute paralleling the National Act in terms and interpretation. The placement of the proviso as an addendum to the power of the Board signifies that, except for the proviso and in conformity with it, no other tribunal may operate in the field occupied by the Board.

The attempt of the court below to limit its holding to permitting a state court to act where the unfair labor practice affects commerce but does

not impede its flow is unpersuasive. "Congress drew no such distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause."

Amalgamated Association v. Wisconsin Employment Relations Board, 340 U. S. 383, 391.

The court below further limits its holding to situations where the remedy before the Board is inadequate. This limitation is also unpersuasive. The grounds of inadequacy stated by the Court are (1) the time consumed in the Board's preliminary investigation before it will seek a temporary injunction, during which irreparable injury may occur, and (2) the possibility that the Board may choose not to take jurisdiction, for administrative reasons of budget and staff availability, where the impact on commerce, though enough for the Board to exercise jurisdiction, may not be sufficiently substantial to warrant its exertion. A preliminary investigation is conducted in every case so that the remedy before the Board would in the view of the court below virtually never be adequate, for the irreparable injury envisioned by the court is the sort of injury which is likely to ensue as the result of any secondary boycott. Furthermore, it was precisely because the Board does conduct a preliminary investigation to screen out unmeritorious cases that enforcement of Section 8 (b), (4) was entrusted to it rather than to private initiative. Finally, that the Board may not entertain an unfair labor practice charge, because of its insubstantial impact on commerce measured by the Board's administrative standards, does not change the right

conferred, or the method of its enforcement, from a public to a private one.

ARGUMENT

The court below has held that state courts have power to enjoin activities denounced as unfair labor practices by the National Labor Relations Act. Justifying this conclusion, the court explicitly recognized that it was enforcing "rights" created by the National Act, but held that the statutory method for enforcing these rights through the National Labor Relations Board is not exclusive (R. 43, 44-45, 48, 53, 54-55).⁵ The particular un-

⁵ As we have mentioned (note 4, p. 6, *supra*), respondent, in addition to the National Labor Relations Act, invoked in its complaint seeking an injunction two Alabama statutes providing criminal sanctions against specified forms of interference with the conduct of a lawful business. These criminal statutes are not even mentioned, however, in the opinion below, which expressly and repeatedly makes clear that the sole basis on which the injunction was affirmed was the alleged violation of Section 8(b) (4) (A) and (B) of the National Act.

In its brief opposing certiorari (p. 8), respondent invokes for the first time Section 383, Title 26, Code of Alabama (1951 Cum. Supp.), which provides that: "Every person shall be free to join or to refrain from joining any labor organization * * *, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family." Respondent argues that, by analogy to *Building Service Employees v. Gazzam*, 339 U.S. 532, the decision below can be sustained as an expression of the public policy of Alabama to safeguard employees from coerced membership in a union. Neither alleged in the complaint nor considered by the court below, this newly improvised contention is in no sense a basis for the decision below. Indeed, the complaint cannot even be read to suggest this issue, for it alleges only that the ultimate object of the Trades Council and its allied unions was to have Bear Brothers recognize a labor organization as the representative of its employees (R. 4-5). Recognition of a union does not at all imply compulsory membership in it. In any event, as construed by the Alabama Supreme Court, Section 383, Title 26, of its Code does not prohibit a contractual requirement for union member-

fair labor practices which led to the injunction in this case are those defined by Section 8(b) (4) (A) and (B) of the Act (Appendix, *infra*, pp. 53-54), but it is clear that the court's ruling would apply equally to any other unfair labor practices. Eliminating any possible doubt on this score, the injunction sustained by the court below forbids, not only the specific conduct of which respondent complained, but "any unfair labor practices as defined by the Labor Management Relations Act" (R. 10).

The procedure thus approved for securing temporary injunctive relief against alleged unfair labor practices differs in two critical respects from the procedure for remedying unfair labor practices which is provided by the National Act. First, respondent, a private party, applied directly to the court for the temporary injunctive relief it has been granted. Under the terms of the Act, a private party desiring relief against an unfair labor practice must file a charge with the Board, and only the Board's General Counsel, acting upon such a charge, is authorized to seek temporary injunctive relief. Second, respondent's application for injunctive relief was made to a state court. Under the terms of the National Act, temporary injunc-

ship as a condition of employment, and seems to permit a strike and picketing to obtain such an agreement. *Hotel and Restaurant Employees v. Greenwood*, 249 Ala. 265, 30 So. 2d 696. So it remains clear on any view that the issue squarely posed by the express ruling of the court below cannot be evaded; and that issue, several times reiterated in the court's opinion, is "whether or not the [National Labor Relations] Act furnishes the exclusive remedy for its enforcement" (R. 51).

tive relief in cases of this character may be awarded, at the suit of the General Counsel, only by the federal courts.

These vital differences make it clear that if Congress intended the administrative scheme it provided for prevention and correction of unfair labor practices to be exclusive, the granting of injunctive relief by the state court on respondent's application conflicts with paramount law. We shall show that such a conflict exists—that in the amended Act, as in the original Act, Congress intended that the wrongs it denounced as unfair labor practices should be remedied only by the procedures the Act prescribes, and that these procedures may not be circumvented and displaced by private suits for injunctive relief.

THE PROCEDURE ESTABLISHED IN THE NATIONAL LABOR RELATIONS ACT FOR VINDICATING THE PUBLIC RIGHTS IT CREATES IS EXCLUSIVE AND PRECLUDES INJUNCTIVE RELIEF AGAINST UNFAIR LABOR PRACTICES IN SUITS BY PRIVATE PARTIES.

Before the amendment of the National Labor Relations Act in 1947, it was settled that vindication of the rights it conferred was "confided by the Act, by reason of the recognized public interest, to the public agency the Act creates." *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261, 266.⁶ "The Board as a public agency acting in the public interest, not any pri-

⁶ Accord; *U. E. R. & M. W. v. I. B. E. W.*, 115 F. 2d 488 (C.A. 2); *Fur Workers Union, Local No. 72 v. Fur Workers Union, Local No. 21238*, 105 F. 2d 1, 8-17 (C.A. D.C.), affirmed, 308 U.S. 522; *Int'l Brotherhood v. Int'l Union*, 106 F. 2d 871 (C. A. 9); *Blankenship v. Kurfman*, 96 F. 2d 450, 453-454 (C. A. 7).

vate person or group; not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." *Id.* at 265.⁷ By centralizing control in the Board, Congress fulfilled its object "to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." S. Rep. No. 373, 74th Cong., 1st Sess., 15; see also H. Rep. No. 1147, 74th Cong., 1st Sess., 23.

The amendments to the Act made no change in this basic design. Except for the decision below,⁸ the uniform prevailing view is that the public rights created by the Act remain enforceable exclusively through the administrative scheme the Act provides. This is the conclusion of the courts of last resort of California,⁹ Connecticut,¹⁰ Minnesota,¹¹ and New York,¹² and of lower courts in

⁷ See also, *National Licorice Co. v. National Labor Relations Board*, 309 U.S. 350, 362-363; *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 193.

⁸ But see also *Oregon ex rel. Tidewater-Shaver Barge Lines v. Dobson*, 30 LRRM 2345 (Oregon Sup. Ct., June 4, 1952).

⁹ *Gerry v. Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689; *In re De Silva*, 33 Cal. 2d 76, 199 P. 2d 6.

¹⁰ *McNish v. American Brass Co.*, 30 LRRM 2254 (Conn. Sup. Ct. of Errors, June 2, 1952); compare *U. E. v. Lawlor*, 15 Conn. Sup. 326, 22 LRRM 2407, 2410-11 (Superior Ct., Conn., April 9, 1948).

¹¹ *Norris Grain Co. v. Nordaas*, 232 Minn. 91, 46 N. W. 2d 94.

¹² *Costaro v. Simons*, 302 N. Y. 318, 98 N.E. 2d 454; see also, *Ryan v. Simons*, 277 App. Div. 1000, 400 N.Y. Supp. 2d

other states.¹³ It is similarly the conclusion of the United States Courts of Appeals for the Fourth,¹⁴ Eighth,¹⁵ and Ninth¹⁶ Circuits, and of numerous federal district courts.¹⁷ It is a conclusion which is clearly compelled by the terms, structure, purpose, and history of the Act.¹⁸

18, affirmed, 302 N.Y. 742, 98 N.E. 2d 707, certiorari denied, 342 U.S. 897; *Alonzo v. Industrial Container Corp.*, 193 Misc. 1008, 85 N. Y. Supp. 2d 835; compare, *Levinsohn v. Joint Board*, 299 N.Y. 454, 87 N.E. 2d 510.

¹³ *Robinson Freight Lines v. Teamsters Union*, 28 LRRM 2453 (Court of Appeals, Tenn., July 18, 1951); *Reed Construction Co. v. Building Council*, 27 LRRM 2161 (Chan. Ct. Miss., February 22, 1950); *Wilkes Sportswear v. Garment Workers*, 29 LRRM 2300 (Common Pleas, Pa., December 26, 1951); *General Electric Co. v. U. A. W.*, 30 LRRM 2607, 2612-13 (Ohio Ct. of Ap., September 8, 1952).

¹⁴ *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. 2d 183 (C.A. 4); see also, *Textile Workers Union v. Arista Mills Co.*, 193 F. 2d 529, 533 (C.A. 4).

¹⁵ *Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. 2d 902 (C.A. 8).

¹⁶ *Schotte v. Theatrical Stage Employees*, 182 F. 2d 158, 165 (C.A. 9), certiorari denied, 340 U.S. 827; *California Association v. Building Trades Council*, 178 F. 2d 175 (C.A. 9).

¹⁷ *I. L. U. v. Sunset Line & Twine Co.*, 77 F. Supp. 119 (N.D. Cal.); *United Packing House Workers v. Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill.); *Textile Workers Union v. Berryton Mills*, 28 LRRM 2540 (N.D. Ga., July 23, 1951); *Born v. Cease*, 101 F. Supp. 473 (D. Alaska); *Nash Kelvinator Corp. v. Grand Rapids Building Trades Council*, 30 LRRM 2466 (W.D. Mich., July 2, 1952); compare *Reavis v. I. B. E. W.*, 101 F. Supp. 542 (N.D. Tex.).

¹⁸ The court below undertakes (R. 46-49) to distinguish such cases as *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. 2d 183 (C. A. 4) holding that the federal courts are without authority to grant relief against unfair labor practices at the suit of private parties. These holdings, the court declares, are explained by the restrictions in the Norris-La Guardia Act (47 Stat. 70, 29 U. S. C. 101 *et seq.*) on the jurisdiction of federal district courts to act in labor disputes, a factor irrelevant to the exercise of general equity power by

A. *As in the original Act, the scheme of the amended Act, designed to achieve uniform and specialized administration, precludes concurrent or substituted enforcement by state courts*

To the extent that they bear on the problem presented here, the basic provisions of the National Labor Relations Act creating unfair labor practices and providing means for their correction were carried forward unchanged by the amendments of 1947. As it did originally, the Act sets out to minimize obstructions to commerce (Section 1) by defining certain labor practices as unfair (Section 8(a) and (b)) and empowering the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce"

a state court. But a reading of the opinions in question makes clear that, while some of them are alternatively grounded on the applicability of the Norris-La Guardia Act, all of them are independently based on the view that the Act's procedure for remedying unfair labor practices is exclusive and that application by private parties to the courts is, therefore, foreclosed. Furthermore, were it true that the National Labor Relations Act entitled private parties to seek judicial as well as administrative relief at their option, the earlier, general provisions of the Norris-La Guardia Act would not bar recourse to the federal courts. *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 563; *Graham v. Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232, 237-240; *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 774.

In short, the conflict of decisions to which we refer can neither be minimized nor explained away; the numerous decisions we have cited stand squarely against the decision below. What is important here, of course, is that the court below has erred and that, as we seek to demonstrate in the discussion following, the many contrary authorities we have cited are clearly correct in their construction of the Act.

(Section 10(a)). To carry out this function, as well as others,¹⁹ Congress created the Board as an agency of the United States (Section 3 (a)). The method provided for enabling a private party to obtain redress against unfair labor practices is still the filing with the Board of a charge, which "sets in motion ~~the~~ machinery of an inquiry." *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 318 U. S. 9, 18.

Unlike the original Act, the amended Act provides for a General Counsel of the Board who is vested with final authority, on behalf of the Board, to investigate unfair labor practice charges, to issue complaints pertaining to them, and to prosecute such complaints before the Board (Section 3(d)). But this provision for dividing responsibility between the Board and its General Counsel, which has as its "well-understood purpose * * * to effect a separation of the prosecuting and adjudicating functions within the Board" (*Haleston Drug Stores v. National Labor Relations Board*, 187 F.

¹⁹ The Board is also empowered (1) to administer the representation machinery for ascertaining whether a majority of employees in an appropriate unit desire to be represented in collective bargaining by a labor organization (Section 9 (b) and (c)); (2) to conduct a union shop poll to ascertain whether employees desire to rescind the authority of their representative to negotiate a union security agreement (Section 9 (e)); (3) to conduct a poll to ascertain whether employees desire to accept their employer's last offer of settlement as a preliminary step to the dissolution of a national emergency injunction (Section 209 (b), Title II, Labor Management Relations Act, 1947); and (4) to enforce or protect the rights, privileges, and immunities granted or guaranteed the employees of any consolidated or merged carrier under Section 222 (f) of the Communications Act of 1934, as amended (57 Stat. 5, 47 U. S. C. 222 (f)).

2d 418, 421 (C. A. 9), certiorari denied, 342 U. S. 815); neither has been nor could be claimed to suggest any intention to depart from the established rule that the administrative remedy affords the sole means of correcting unfair labor practices. If anything, this effort to improve the Board's procedures reflects Congress' recognition that the rule was being retained. See pp. 20-21, 22, *infra*.

Upon the filing of a charge, the Board, by its General Counsel, is empowered to issue a complaint against the alleged offender, together with a notice of hearing (Sections 10 (b) and 3 (d)). Should a complaint issue, the offender is entitled to answer, and at the ensuing hearing, customarily presided over by a trial examiner of the Board, evidence is adduced relevant to the issues joined by the complaint and answer (Section 10 (b)). Upon the record so made, "reduced to writing and filed with the Board," the Board states its "findings of fact," and issues an order, either dismissing the complaint or granting relief, whichever in its judgment is appropriate to the disposition of the cause in the light of the policies the Act is designed to effectuate (Section 10 (c)). Thereafter, the Board may seek enforcement of its order, or any "person aggrieved by a final order of the Board granting, or denying" relief may seek its review, in an appropriate Court of Appeals which has, upon certification to it of the transcript of the record before the Board, "exclusive" jurisdiction to decide the controversy within the scope of permissible review (Section 10 (e) and (f)). These steps, from complaint

through court review and enforcement, like the initiating charge, are identical in every presently material respect in both the original and amended Act.

In a second change, the amended Act enables the Board to obtain interlocutory relief against the commission of unfair labor practices (*National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U. S. 675, 681-683) by applying to an appropriate federal district court, during the pendency of proceedings before the Board, for a temporary injunction (Section 10(j) and (l)). With respect to the unfair labor practices defined by Section 8(b)(4)(A), (B), and (C),²⁹ should the "officer or regional attorney" investigating the charge have "reasonable cause to believe such charge is true and that a complaint should issue," it is mandatory for him to petition a federal district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter" (Section 10(l)). The same procedure is applicable to unfair labor practices charged under Section 8(b)(4)(D) except that application for temporary injunctive relief is not mandatory (Section 10(l)). With respect to all other unfair labor practices, after the issuance of a complaint, the Board may in its discretion seek interlocutory relief (Section 10(j)).

Like the new division of authority between Board and General Counsel, the provision for interlocu-

²⁹ The first two of these subsections, (A) and (B), are involved in this case.

tory injunctions to be sought *by the Board* affords no basis for the granting of such relief by any court, state or federal, at the suit of a private party. Precluding any doubt of this, the Senate Committee reporting the provision explained it as follows (S. Rep. No. 105, 80th Cong., 1st sess., 8) :

Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that *the Board, acting in the public interest and not in vindication of purely private rights*, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices. [Emphasis added.]

In addition to the Board's newly created authority to seek injunctive relief pending its administrative proceedings, the amended Act carries forward from the original Act provisions giving to the court of appeals, during the pendency of review or enforcement proceedings, "exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper" (Section 10(e) and (f)). Whenever the Board seeks temporary injunctive relief, either from a federal

district court pending proceedings before the Board or from a court of appeals pending review or enforcement proceedings, the restrictions of the Norris-La Guardia Act are declared inapplicable (Section 10(h)). But these restrictions are lifted "only where an injunction is sought by the National Labor Relations Board, not where proceedings are instituted by a private party." *Bakery Drivers Union v. Wagshal*, 333 U. S. 437, 442.

The foregoing summary makes it clear, we think, that the National Labor Relations Act, unaltered in this respect by the amendments of 1947, still prescribes "a particular method by which [unfair labor] practices should be ascertained and prevented," still "sets forth a definite and restricted course of procedure," and still designates the "Board as a public agency acting in the public interest, not any private person or group, * * * as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 264, 265. The two changes we have noted—the assignment of independent responsibilities to the General Counsel and the provision for temporary injunctive relief pending Board proceedings—merely strengthen this conclusion. Both changes were designed to improve the effectiveness of the prescribed statutory scheme. Congress chose to strengthen its existing exclusive machinery, not to supplement or displace it by permitting recourse to other means of enforcement by private persons.

It is evident, in short, that in the amended Act, as in the original, "Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task."

Amazon Cotton Mill Co. v. Textile Workers Union, 167 F. 2d 183, 187 (C. A. 4). To permit any court of general jurisdiction to redress the unfair labor practices denounced by the Act on application of a private person would destroy this integrated administration of the Act through centralized control in the Board. There would be an end to the "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft Corp v. Hirsch*, 331 U. S. 752, 767-768) which Congress clearly sought to achieve.²¹

As the Court of Appeals for the Fourth Circuit pointed out, rejecting the argument that private parties could obtain injunctive relief against un-

²¹ It is true that some diffusion may arise with respect to 8(b) (4) unfair labor practices as a result of providing an administrative remedy before the Board and a suit for money damages for parallel conduct before a court of competent jurisdiction. Title III, Sec. 303, Labor Management Relations Act, 1947, 61 Stat. 158, 29 U. S. C., Supp. V, 187. For suggested means of overcoming or minimizing this consequence by permitting the administrative judgment to prevail, see Comment, 61 Yale L. J., 745 (1952). But whatever inconsistencies may develop in this respect (compare *United Brick & Clay Workers v. Deena Artware, Inc.*, 30 LRRM 2485 (C. A. 6, July 30, 1952)) with *National Labor Relations Board v. Deena Artware, Inc.*, 30 LRRM 2479, 2484-2485 (C. A. 6, July 30, 1952), it is clear that Congress refused to depart further from administrative handling of unfair labor practices. See pp. 25-30, *infra*. The court below overstepped the plain line that Congress drew.

fair labor practices in the federal district courts (*Amazon Cotton Mill Co. v. Textile Workers Union, supra*, at 190):

More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly the statute should not be given an interpretation which would lead to such consequences.

When the interpretation thus rejected is adopted and extended, as it is in the decision below, to the multitude of state courts exercising general jurisdiction, the mischief is infinitely multiplied. Beginning with its pioneer and classic expression in *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, through its recent reaffirmation in *Far East Conference v. United States*, 342 U. S. 570, a settled course of interpretation safeguards the administrative process against such disruption.)

As the court below appears to acknowledge (R. 50, 51, 52-53), were Alabama to duplicate the unfair labor practices defined by the National Act and apply its prohibitions to operations affecting commerce, it is clear that the state would have effected a forbidden intrusion into a field which Congress has preempted. *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U.S. 953; *Amalgamated Association v. Wisconsin Em-*

ployment Relations Board, 340 U.S. 383, 390, n. 12. Alabama cannot achieve the same result; and the same mischief in administration, by enforcing the National Act rather than its own law.

B. *The legislative history of the 1947 amendments confirms the conclusion that the statutory procedures are exclusive*

If the statutory text left any doubt that in retaining the detailed provisions for enforcement through the Board Congress meant to retain as well the exclusive character of these provisions, the doubt would be erased by the legislative history of the amendments. Congress was fully aware that the new unfair labor practices defined by the amended Act, including those in Section 8(b)(4), would, like the old, be enforceable only through the Board. Recognizing this, a minority of the Senate Labor Committee, composed of Senators Taft, Ball, Donnell, and Jenner, proposed that, with respect to 8(b)(4) violations only, private persons be allowed direct recourse to federal district courts for injunctions under a procedure substantially freed from the restrictions of the Norris-La Guardia Act. S. Rep. No. 105, 80th Cong., 1st sess., 54-56. They explained in support of this proposal that (*id.* at 54):

The committee bill admits that such boycotts and strikes are improper, but it only proposes to make them unfair labor practices. *This means that appeal must be made * * * to the National Labor Relations Board.* The

bill does provide that, on petition of the NLRB regional attorney, the Board may obtain a temporary injunction from a court while it is conducting a hearing on the question whether the strike is an unfair labor practice or not. If it finds that it is, it then may issue a cease and desist order against such a strike and later ask to have this enforced by the court. In our opinion this is a weak and uncertain remedy for those injured by clearly illegal strikes. *It depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party.* The facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure. In addition to that, the best estimate of the time lag between the filing of charges with the NLRB and its obtaining of a temporary injunction is not less than 2 weeks to a month. [Emphasis added.]

Senator Ball thereafter introduced and strongly supported the proposal espoused by the minority of the Senate Labor Committee. 93 Cong. Rec. 4834-4838. After much discussion, it was voted down. 93 Cong. Rec. 4847. It was rejected because enforcement was deemed more suitably entrusted to administrative processes exclusively controlled by a specialized agency in which precipi-

tate action would be guarded against by preliminary investigation.²² It was also feared that private recourse to injunctive relief uncontrolled by the safeguards of the Norris-LaGuardia Act would reintroduce familiar abuses. 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st sess., 56.

Illustrative of the sentiment which prevailed are the statements of Senators Ives, Morse, and Smith. Senator Ives stated that (93 Cong. Rec. 4839):

* * * [the] proposal revives the injunction upon the request of an employer. * * * I deplore a condition which in any way, shape, or manner will revive the flagrant abuses which brought about the enactment of the Norris-LaGuardia Act. I think the pending amendment opens the door; it is the entering wedge.

Senator Morse declared (93 Cong. Rec. 4841):

It has been my consistent endeavor while this legislation has been under discussion to best determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor problems. I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the com-

²² Thus, Congress rejected Senator Ball's argument that it was unnecessary that the "National Labor Relations Board shall first screen the charges, before the courts are permitted to pass on them." 93 Cong. Rec. 4836.

plexity and difficulty of this field. Labor problems are complex; as complex, indeed, as our entire social structure, since the great mass of our people are workers. It is a field which has been growing even more complex as our society has come to depend more and more upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation which we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

I am confident, despite the high regard in which I hold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to grant to the district courts, upon application of the Board, an interim power to maintain the status quo pending resolution of the problem by the body which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have some knowledge of the field, but all of whom can certainly not pretend to be experts. * * *

* * * I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all

the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy.

Senator Smith said (93 Cong. Rec.. 4843):

We decided, after debating the question, that instead of opening these cases to direct attack by employers aggrieved, it was wiser to consider them as unfair labor practices, and put them under the National Labor Relations Board. I feel that as we have broadened the scope of the National Labor Relations Board and the scope of the Wagner Act to include unfair labor practices by labor organizations as well as by employers, our logical procedure in dealing with these questions is through the Board, placing the responsibility on the Board to deal with such cases, whether on the one side or the other.

Congress specifically and deliberately chose, in short, to retain the "administrative law approach," and rejected the "so-called court approach." 93 Cong. Rec. 4132. It did so in order to insure the "disinterested, public interest standards and expertness of a governmental agency which has the initiative control of retributory measures." *Bruce's Juices, Inc. v. American Can Co.*, 330 U.S. 743, 751.

Impressed "that opposition to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes seems to be so

strong," Senator Taft offered as a compromise alternative the creation of a cause of action for *money damages only* for the conduct proscribed by Section 8(b)(4) as unfair labor practices. 93 Cong. Rec. 4843-4844. Section 303 of Title III, Labor Management Relations Act, embodying this compromise, was thereafter introduced and enacted. 93 Cong. Rec. 4858-4860, 4874; see also *I. L. W. U. v. Juneau Spruce Corp.*, 342 U. S. 237, 243-245. It permits suit for money damages, to compensate for injury from conduct identical to that prohibited by Section 8(b)(4), to be brought "in any district court of the United States * * *, or in any other court having jurisdiction of the parties * * *." Thus, the sole judicial action which Congress authorized private parties to initiate in either the state or the federal courts was a suit for damages. This limited grant of specific authority confirms what the other provisions of the Act and the legislative history amply demonstrate—that injunctive relief against such unfair labor practices cannot be obtained by private parties or granted by a state court, but can be sought only by the Board and awarded only by the federal courts.

C. *The deletion of the word "exclusive" from Section 10(a) of the Act, which empowers the Board to prevent unfair labor practices, was not designed to confer concurrent jurisdiction on state courts*

Section 10(a) of the Act in its original form provided:

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power [shall be exclusive, and] shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, [code,] law, or otherwise.

The amendments of 1947 deleted the words we have bracketed and added the following proviso:

Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

As its sole basis for holding that the amended Act differs from the original Act in permitting state courts to redress unfair labor practices by injunction, the court below relies on the omission of the word "exclusive" from Section 10(a).

In the light of the considerations already advanced, it would seem clear that, by the mere elimination of the word "exclusive" while retaining and strengthening the Act's unified scheme of ad-

ministrative enforcement, Congress did not intend to permit private parties to invoke extra-statutory enforcement procedures. But there are more specific and decisive arguments which show that the court below has misconceived the significance of the deleted word. To begin with, the legislative history reveals that the change was not intended as the court construes it. As the House conferees explained, because of the new "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in a federal district court pending proceedings before the Board and because of "provisions making unions suable" for money damages for conduct constituting unfair labor practices under Section 8(b)(4), it was thought no longer appropriate to describe the Board's power as wholly exclusive. H. Conf. Rep. No. 510, 80th Cong., 1st sess., 52.²³ It was for this reason alone that the word "exclusive" was deleted. The omission of this single word, a slight change fully explained by the legis-

²³ The conferees added that the "conference agreement makes clear that, *when* two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." *Ibid.* (Emphasis added). This "does not mean, of course, that a general remedy in the courts was being given by the act, but merely that an option existed where a remedy in the courts was given by the act, or existed otherwise." *Amazon Cotton Mills Co. v. Textile Workers Union*, 167 F. 2d 183, 187 (C. A. 4). Insofar as unfair labor practices are concerned, the reference to "*when* two remedies exist" can relate only to temporary injunctive relief at the instance of the Board and to suit for money damages for conduct proscribed by Section 8(b)(4). These aside, no other "remedies exist * * * before the courts" for the redress of unfair labor practices.

lative history, was plainly not intended to accomplish the drastic innovation of a wholly new scheme of enforcement. *Amazon Cotton Mill Co. v. Textile Workers Union*, 176 F. 2d 183, 187 (C.A. 4), *Gerry v. Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689, 694, 695, *McNish v. American Brass Co.*, 30 LRRM 2254, 2256 (Conn. Sup. Ct. of Errors, June 2, 1952); *Born v. Cease*, 101 F. Supp. 473, 477 (D. Alaska).

Moreover, in ascertaining whether particular enforcement machinery which Congress creates precludes resort to any other, the determination has never turned on whether the statute expressly describes its procedure as "exclusive." Contrary to the assumption of the court below (R. 44-45)—that when Congress "passes an act conferring a right and providing a remedy, such remedy so provided is not ordinarily exclusive"—the rule is that "In such a case the specification of one remedy normally excludes another." *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, 301. This is particularly true where the right created is "public" rather than "private," as under the National Labor Relations Act. See pp. 14-15, *supra*. And the applicability of the rule here is clearly demonstrated by decisions under the original Act holding the Board's powers to be exclusive in areas where the Act did not explicitly so describe them.

Thus, although the Act did not literally command such a result, the Board's sole standing to bring contempt proceedings was inferred from

the "aim, character and scope" of the Act in creating a "particular agency" and a "special procedure" to redress unfair labor practices. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 264. Similarly, although "the Act does not in express terms make the certification power of the Board exclusive," this was inferred as "the plain intent of the Act" discernible from the creation of a "new agency with both power and machinery appropriate to the enforcement of the rights recognized and to the prevention of the practices denounced." *Fur Workers Union, Local No. 72 v. Fur Workers Union, Local No. 21238*, 105 F. 2d 1, 12 (C. A. D. C.), affirmed, 308 U. S. 522; accord; *National Labor Relations Board v. Northern Trust Co.*, 148 F. 2d 24, 27 (C. A. 7). In addition, the preclusion of state action was likewise deducible, although not explicitly stated, since "it long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject although express declaration of such result is wanting." *Bethlehem Steel Co. v. New York Labor Board*, 330 U. S. 767, 772.

When the original Act used the word "exclusive" in describing the power of the Board to prevent unfair labor practices, it merely confirmed what the Act as a whole in any event necessarily required. See *Amalgamated Utility Workers v. Consolidated Edison Co.*, *supra*, at 266. The deletion of the word "exclusive" did not change the Act as a whole. Congress still sought the benefits of uniformity and specialization. Congress still sought to avoid the confusion of dispersing the adminis-

tration of the Act among state and federal courts in addition to the Board. These considerations control. As in *Texas and Pacific Railway Company v. Abilene Cotton Oil Company*, 204 U. S. 426, the structure, subject, history, and purpose of the Act converge to require that the statutory scheme for remedying unfair labor practices be held exclusive. In *Texas and Pacific*, the initial exclusive jurisdiction of the Interstate Commerce Commission was implied, although not in terms prescribed, because of the "indissoluble unity" of the statutory scheme, the need for a "uniform standard," the conferment of "administrative power" upon the Commission, and "because, if the power existed in both courts and the Commission to originally hear complaints * * *, there might be a divergence between the action of the Commission and the decision of a court * * * which would render the enforcement of the act impossible." 204 U. S. at 440-441. Here, as there, "the act cannot be held to destroy itself." *Id.* at 446.

Finally, the view that disruption of the established statutory scheme was intended by omission of the word "exclusive" from Section 10 (a) is refuted by the proviso that Congress, in the same amendment, added to this section, providing for cession of jurisdiction by the Board to state or territorial agencies. *Supra*, p. 31. The location of this proviso as an addendum to the Board's own powers signifies that, except for the proviso and in conformity with it, no other tribunal may operate in the field occupied by the Board. And the terms under which cession may take place em-

phasize the concern of Congress with maintaining uniformity in administration. The Board may not "cede" jurisdiction to a state or territorial agency if "the provision of the State or Territorial statute applicable to the determination of such cases by such agency is *inconsistent* with the corresponding provision of this Act or *has received a construction inconsistent* therewith." (Emphasis added.) Thus, cession to a state agency is conditioned, not only upon substantial identity in the provisions of the parallel statutes, but also upon substantial continuing identity in their interpretation. But if, as in this case, a state court undertakes on its own to redress the unfair labor practices prohibited by the National Act, there can be no assurance that its interpretation and application of the Act will be in accordance with the Board's.²⁴ See pp. 40-42, *infra*. Expressly legislating against such uncer-

²⁴ In respondent's brief in opposition to certiorari (pp. 14-15), there is a suggestion that in view of the uncontroverted allegation of a violation of Section 8 (b) (4) (A) and (B) it is unseemly to contest jurisdiction to redress an admitted wrong. But, "The question here is not whether we are dealing with a primary or secondary boycott, but whether our state courts or N.L.R.B. has the power to make such decision." *Norris Grain Co. v. Nordaas*, 232 Minn. 91, 108, n. 7, 46 N. W. 2d 94, 104. There is no merit to the suggestion that "because it is clear what the decision of the Board will be * * *, a court has original jurisdiction merely because it may be certain what the Board will hold." *Int'l Brotherhood v. Int'l Union*, 106 F. 2d 871, 876 (C. A. 9). The "power to decide a matter can hardly be made dependent on the way it is decided." *Bethlehem Steel Co. v. New York Labor Board*, 330 U. S. 767, 775. Thus, respondent's suggestion would lack merit even if it were not true, as it is, that the pleader's conclusion that Section 8 (b) (4) (A) and (B) have been violated is open to dispute. See pp. 40-42, *infra*.

tainty in the very section on which the court below relies, Congress could not have meant to recreate it by omission of the word "exclusive."

D. *Because the unfair labor practices alleged were admittedly subject to the National Board's jurisdiction, neither the amount of commerce involved nor the supposed inadequacy of the statutory remedy sustains the state court's assertion of jurisdiction*

It is clear, of course, that on the undisputed facts showing the nature of the business involved in this case (pp. 2-3, 5, 6, *supra*), the alleged unfair labor practices would be subject to the jurisdiction of the National Labor Relations Board.²⁵ There would otherwise have been no occasion for the court below to consider whether the jurisdiction it was asserting was precluded by the National Act.

Conceding, then, that it was sustaining the power of state courts to remedy by injunction in private suits practices which the Act empowers the Board to prevent, the court below has indicated certain restrictions it would recognize upon this alternative state remedy. First, the court would apparently approve this remedy only where the unfair labor practices, though affecting commerce, do not

²⁵ Compare the interstate commerce ramifications involved in the construction of the multi-story 124-unit apartment house in this case with those involved in the construction of the commercial building in *National Labor Relations Board v. Denver Building & Construction Trades Council*, 341 U. S. 675, 683-684, and the construction of the private dwelling in *Electrical Workers v. National Labor Relations Board*, 341 U. S. 694, 696, 699.

"impede the flow of commerce" (R. 43, 48, 50, 51, 53). Second, the court has indicated (R. 55), the granting of injunctive relief is justified where irreparable injury is alleged and where the statutory remedy through the Board is inadequate. We think, for the reasons already stated, that the conceded fact that the Board would have jurisdiction in this case is conclusive against the injunctive remedy by private suit approved below. Here, we turn to the qualifications suggested by the court below, to show that they afford no basis for its contrary view.

1. The distinction suggested by the court below between practices affecting commerce and those impeding its flow is totally without statutory basis. "Congress drew no such distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause." *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, 391. There is no yardstick for measuring the quantum of commerce which divides the two areas the decision below seeks to create. But if there were, it would make no difference. To permit both the Board and the state courts to enforce the National Act in the area short of "impeding the flow of commerce" would not eliminate the evil of concurrent administration; it would merely transfer it from all of the field to a part of it. It would, moreover, introduce the troubling questions of how to decide where exclusiveness ends and concurrence begins and whose judgment should prevail as to the loca-

tion of the boundary between the two. In short, the purported distinction creates the very evils which led this Court to hold that there is here no room for "a case by case test of federal supremacy * * *." *Bethlehem Steel Co. v. New York Labor Board*, 330 U. S. 767, 776.

2. In suggesting that the injunction in this case was proper because the remedy before the Board is "inadequate" (R. 55); the grounds of inadequacy stated by the court below are (a) the time consumed in the Board's preliminary investigation before it will seek a temporary injunction, during which irreparable injury may occur, and (b) the possibility that the Board may choose not to take jurisdiction, for administrative reasons of budget and staff availability, where the impact on commerce, though enough for the Board to exercise jurisdiction, may not be sufficiently substantial to warrant its exertion. Neither of these grounds sustains the state court's action.

a. The Board conducts a preliminary investigation in every case, so that the remedy before the Board would in the view of the court below virtually never be adequate, for the irreparable injury envisioned by the court is the sort of injury which is likely to ensue as the result of any secondary boycott. And yet it was precisely because the Board does conduct a preliminary investigation to screen out unmeritorious cases that enforcement of Section 8 (b) (4) was entrusted to it rather than to private initiative (*supra*, pp. 26-27). Congress was fully aware that the administrative pro-

cess of screening charges occasions delay. Such delay was one of the reasons advanced in support of the proposal giving private persons independent recourse to federal district courts for injunctions against violations of Section 8 (b) (4). S. Rep. No. 105, 80th Cong., 1st sess., Supplemental Views, 54; 93 Cong. Rec. 4836. But Congress rejected this consideration in favor of disinterested deliberateness. Moreover, it minimized delay with respect to 8 (b) (4) charges by requiring that "the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character" (Section 10 (1)).

In holding that this procedure is inadequate the court below is reweighing the choice that Congress has already made. "When Congress itself has struck the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement under the guise of exercising equitable discretion." Mr. Justice Frankfurter, concurring in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U. S. 579, 609-610.

The vice which Congress sought to avoid is illustrated by this case. Upon the face of the complaint alone, without a hearing or even supporting affidavits, the Alabama Circuit Court issued a temporary injunction (R. 9-11). In contrast, under the procedure prescribed by Section 10 (1) of the National Act, a temporary injunction at the suit of the Board may issue only after administrative investigation of the charge discloses that there is

reasonable cause to believe that the charge has merit and a complaint should issue. Furthermore, a temporary injunction may issue only after notice and hearing, and "no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period." All the procedural safeguards with which Congress hedged the grant of temporary relief were bypassed in this case.

There are, in addition, substantive considerations, important in the Board's administration of the Act, which are ignored by the decision below. Had the complaint before the Alabama Circuit Court been brought as a charge before the Board, administrative screening would have promptly disclosed that it is not possible to tell on the face of the complaint alone whether or not there is a violation of Section 8 (b) (4) (A) and (B). In accordance with the criteria established by the Board to determine whether the picketing of a construction project is primary or secondary,²⁶ it would have been necessary to inquire (1) whether the picketing clearly identified the Trade Council's dispute as being with Bear Brothers, the

²⁶ For an explanation of the criteria, see the Board's brief in *National Labor Relations Board v. Denver Building and Construction Trade Council*, 341 U. S. 675, No. 393, October Term, 1950, pp. 23-38; see also, *National Labor Relations Board v. Service Trade Chauffeurs*, 191 F. 2d 65 (C. A. 2).

primary employer, and not with Ledbetter, the neutral employer; (2) whether the picketing occurred only at the times when Bear Brothers' employees were present on the job; and (3) whether any resulting discontinuance of business between Bear Brothers and Ledbetter occurred only as a consequence of primary pressure legitimately directed against Bear Brothers to secure recognition. The complaint on its face fails to provide an answer to these questions.

Even if investigation proved this to be a case where injunctive relief seemed warranted, the temporary injunction issued by the Alabama Circuit Court would be clearly excessive in scope. It enjoins all picketing of the construction project (R. 10-11). Any injunction conforming to the National Act should enjoin only secondary picketing. The injunction also prohibits "Engaging in any unfair labor practices as defined by the Labor Management Relations Act" (R. 10). A violation of Section 8 (b) (4) (A) and (B) does not warrant an injunction extended against all of the dissimilar unfair labor practices forbidden to a union, including such unrelated conduct as, for example, a refusal to bargain in good faith (Section 8(b) (3)), or requiring employees to pay an excessive or discriminatory initiation fee (Section 8(b) (5)). *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426.

It seems clear, therefore, that the preliminary investigation by the General Counsel of the Board which the Act prescribes, but which the court below considers to render the statutory remedy inade-

quate, serves vital purposes which have been neglected in this case. The result of by-passing the Board is to administer the Act contrary to the will of Congress.

b. There remains, finally, the argument that the statutory remedy is inadequate because of the "possibility" that the Board might not entertain the unfair labor practice charge because of its unsubstantial impact on commerce measured by the Board's administrative standards.²⁷ The short answer is that the Board's discretionary withholding of its power does not change the right conferred by the National Act, or the method of its enforcement, from a public to a private one. The jurisdiction which the Board chooses not to exercise is not thereby conferred on another tribunal to be exerted at the suit of a private person.

But there is no occasion in this case to determine whether, if the Board declines to take jurisdiction, there are ways in which, apart from enforcing the National Act, a State is free to act. If there is room for state action, it could in any event only invoke its own law, and not, as the court below did, rely on the National Act, which confers no enforcement authority on it in any circumstances. Furthermore, assuming that another tribunal may act where the

²⁷ For a full explanation of the standards applied by the Board to determine whether to assert jurisdiction, see National Labor Relations Board, Sixteenth Annual Report, pp. 15-39 (1951). The Board's policy has been approved in *National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U. S. 675, 684; *Haleston Drug Stores, Inc. v. National Labor Relations Board*, 187 F. 2d 418, (C. A. 9), certiorari denied, 342 U. S. 815; *Progressive Mine Workers v. National Labor Relations Board*, 187 F. 2d 298 (C. A. 7).

Board does not, the Board must certainly be given an opportunity first to decide, before other tribunals intervene, whether its own standards call for the exercise of its jurisdiction. Since the Board can make this determination only after a charge has been filed with it, the filing of a charge with the Board and its declination of jurisdiction would be indispensable preconditions to resort to any other tribunal.

In the circumstances presented here, the reference of the court below "to a *possibility* that the Board will not take jurisdiction" is purely speculative (R. 55; emphasis supplied). There is no evidence in the record sufficient to determine whether or not, in the exercise of its administrative discretion, the Board would act in this case. Generally speaking, insofar as its criteria bear on a situation like the present, the Board will assert jurisdiction over an enterprise where it has (1) a direct inflow of goods from out-of-state sources valued at \$500,000 a year, or (2) an indirect inflow valued at \$1,000,000, or (3) a direct outflow to other states valued at \$25,000 a year, or (4) an outflow to interstate concerns within the state valued at \$50,000 a year, or (5) a combination of inflow and outflow which, when the percentage in each class is added together, comes to 100.²⁸ In addition, where, as here, a secondary boycott is alleged, the Board considers not only the entire business of the primary employer (Bear Brothers), without limitation to the particular project at which the boycott is occur-

²⁸ National Labor Relations Board, Sixteenth Annual Report, p. 16 (1951).

ring, but adds to it also the operations of any neutral employer (such as Ledbetter) to the extent that they are affected by the boycott activities.²⁹ In this case, on the record made, it is complete conjecture whether or not the operations of Bear Brothers and Ledbetter (and any other neutral employer who may be affected) suffice to meet the Board's administrative standards for exercising jurisdiction. Accordingly, it is on surmise alone that the court below invokes the "possibility" of the Board's refusal of jurisdiction as a basis for finding the remedy before the Board to be inadequate.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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OCTOBER, 1952.

²⁹ *Id.* at pp. 22-23, 34-37.

APPENDIX

The revelant provisions of the original National Labor Relations Act (49 Stat. 449, 29 U. S. C. Secs. 151, *et seq.*), and of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C.; Supp. V, Secs. 141, *et seq.*), are as follows:

Key to Comparison

Portions of the National Labor Relations Act which have been eliminated by the Labor Management Relations Act are enclosed in black brackets; provisions which have been added to the National Labor Relations Act are in italics; and unchanged portions of the National Labor Relations Act are shown in roman.

NATIONAL LABOR RELATIONS ACT

[AN ACT]

[To diminsh the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.]

FINDINGS AND POLICIES

SECTION 1. The denial by *some* employers of the right of employees to organize and the refusal by *some* employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) ma-

terially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers and members have the intent or the necessary effect of burdening or obstructing commerce

by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

* * * * *

(10) The term "National Labor Relations Board" means the National Labor Relations Board [created by] *provided for in* section 3 of this Act.

* * * * *

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) [There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except] *The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President, by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term*

of five years, and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and [two] three members of the Board shall, at all times, constitute a quorum [...] of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

* * * * *

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation

of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8. (a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate (or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, [(a)] an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in [the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712, as amended from time to time, or in any code or agreement approved or prescribed thereunder,] any other statute of the United States, shall preclude an employer from making an

agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (c) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

(b) *It shall be an unfair labor practice for a labor organization or its agents—*

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any em-

employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work; Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a mem-

ber of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power [shall be exclusive, and] shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, [code,] law, or otherwise: *Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.*

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.* Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. [In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.] *Any such proceeding shall, so far as practicable, be conducted in accordance with the*

rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C).

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon [all] *the preponderance* of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope.* Such order may further require such person to make reports from time to time showing the ex-

tent to which it has complied with the order. If upon [all] the preponderance of the testimony taken the Board shall *not* be of the opinion that the [no] person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. *No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.*

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the *United States Court of Appeals* [of] for the District of Columbia), or if all the circuit

courts of appeals to which application may be made are in vacation, any district court of the United States (including the [Supreme] *District Court of the United States for the District of Columbia*), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board [as to the facts,] *with respect to questions of fact* if supported by substantial evidence[,], *on the record considered as a whole* shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the

court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which[,] *findings with respect to questions of fact* if supported by *substantial evidence, on the record considered as a whole* shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the *United States Court of Appeals* [of] *for the District of Columbia*, by filing in such court

a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; [and] the findings of the Board [as to the facts,] *with respect to questions of fact* if supported by *substantial* evidence[,] *on the record considered as a whole* shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdic-

tion of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

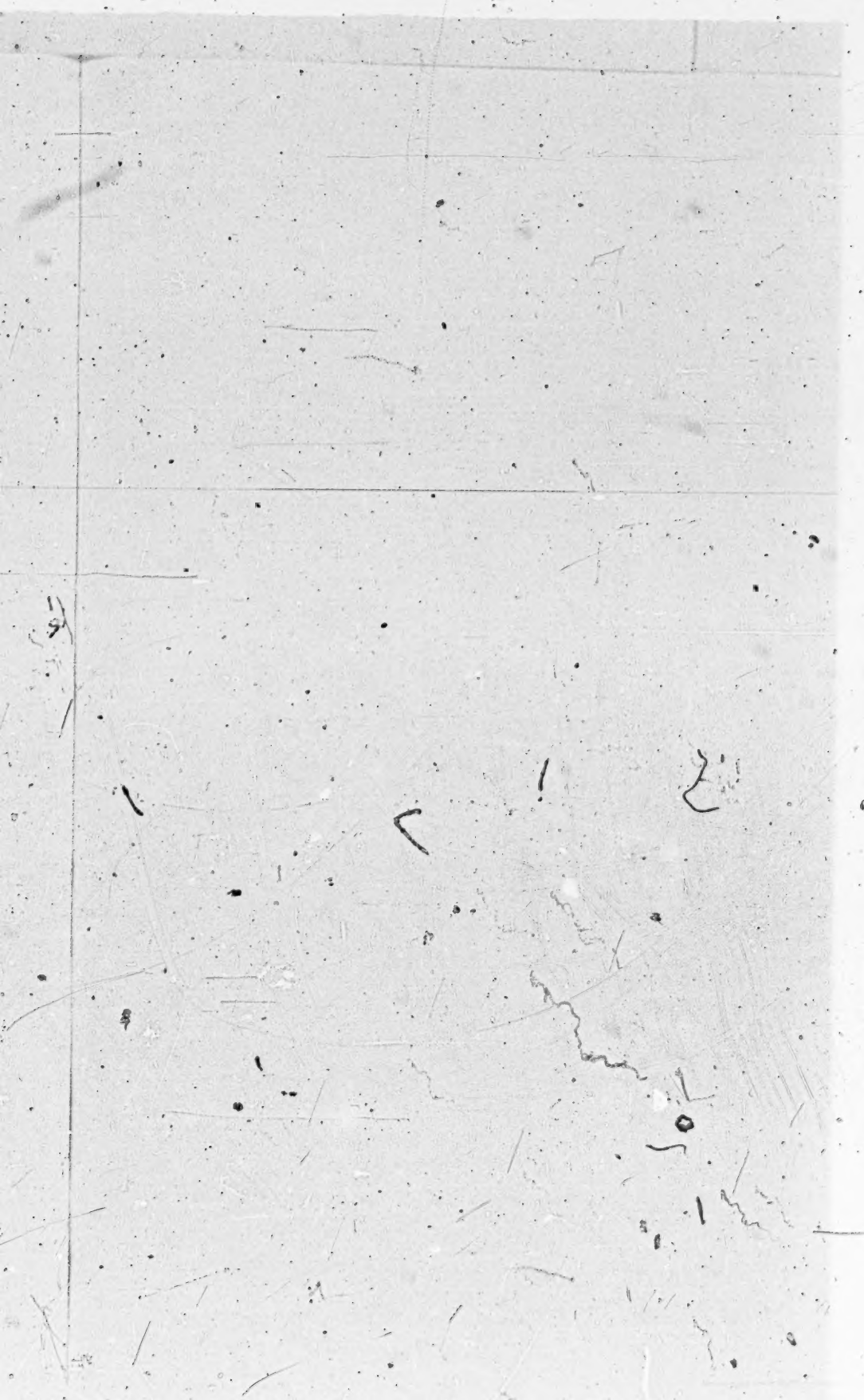
(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(j) *The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.*

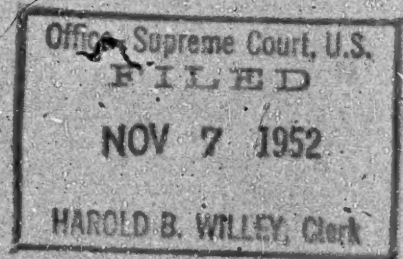
(k) *Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.*

(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel

and present any relevant testimony: Provided further; That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).



LIBRARY
SUPREME COURT, U. S.



IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1952

NO. 43

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,
PETITIONERS,

V.

LEDBETTER ERECTION COMPANY, INC.

BRIEF AND ARGUMENT OF RESPONDENT

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IN THE
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NO. 43

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,
PETITIONERS,

V.

LEDBETTER ERECTION COMPANY, INC.

BRIEF AND ARGUMENT OF RESPONDENT

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**IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1952**

NO. 43

**MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,
PETITIONERS,**

V.

LEDBETTER ERECTION COMPANY, INC.

**On Writ of Certiorari to the Supreme Court of
The State of Alabama**

BRIEF FOR THE RESPONDENT

QUESTIONS PRESENTED

Whether the jurisdiction of a state court to enjoin picketing for an unlawful purpose, contrary to the public policy of the state, has been superseded by the Labor Management Relations Act of 1947.

STATUTES INVOLVED

The pertinent Alabama statutes, Title 26, Section 383; Title 26, Section 387; Title 14, Sections 54, 57 of the Code of Alabama of 1940 are set forth in the appendix hereto attached.

STATEMENT

This case is before this Court on a writ of certiorari issued to review action of the Supreme Court of Alabama in refusing to dissolve a temporary writ of injunction. The sole issue raised in the court below, the sole issue raised here is whether the Alabama court had jurisdiction to enjoin picketing which was a secondary boycott and alleged to be violative of both the statutes of Alabama and the Federal statute. This question of jurisdiction we believe must be determined on the basis of whether, under any aspect of the facts shown by the record, the Alabama court had such jurisdiction. This is particularly true since there has been no final decree in the state courts, no finding of fact and the complainant below has full power to amend the bill of complaint at any time prior to such final decree.

The facts shown by the record are analogous to but somewhat converse to the facts in the Denver case.* The employees of Ledbetter Erection Company operated under a union shop contract (R. 3, 4). There was no labor dispute between Ledbetter Erection Company and its employees and the Petitioner Montgomery Building and Construction Trades Council was not seeking to represent Ledbetter Erection Company's employees. Bear Brothers, Inc., a general contractor, entered into a contract for the erection of an apartment house in Montgomery, Alabama and entered into a sub-contract with Ledbetter Erection Company for the erection of the structural steel used therein (R. 3). There was no connection between Ledbetter Erection Company and Bear Brothers other than this sub-con-

*National Labor Relations Board v. Denver Building and Construction Trades Council, 341 U. S. 675.

tract and Ledbetter Erection Company had no control over the employees of Bear Brothers (R. 7).

The complaint specifically alleged that the Trades Council knew of Ledbetter Erection Company's union shop contract and knew that Ledbetter Erection Company's employees would refuse to cross a picket line. (R. 7). The complaint further specifically alleged (R. 4) that the Trades Council did not represent employees of Bear Brothers. Nevertheless for the purpose of forcing Bear Brothers to recognize them as the exclusive bargaining representative of such employees, the Trades Council placed a picket line across the entrance to the apartment house. The bill further alleged that Ledbetter Erection Company's union employees were not willing to cross said picket line and the representatives of the union to which Ledbetter Erection Company's employees belonged had attempted to get such picket line removed but the Trades Council had failed or refused to remove the same (R. 5). The bill specifically alleged (R. 7) that such action of the Trades Council was a violation of the Statutes of Alabama; that such action amounted to an unlawful interference with Ledbetter Erection Company's business and its right to perform its contract with Bear Brothers; that such action was a combination or arrangement for the purpose of hindering, delaying or preventing Ledbetter Erection Company from carrying on a lawful business in violation of Section 54, Title 14 of the Code of Alabama of 1940 and constituted the use of unlawful means to prevent Ledbetter Erection Company from engaging in a lawful business in violation of Section 57, Title 14, of the Code of Alabama of 1940.

At no place did the bill of complaint allege that eith-

er the business of Ledbetter Erection Company or the business of Bear Brothers, Inc., in the erection of said apartment house affected interstate commerce. The bill did allege in Paragraph 11 (R. 5) that the action of the Trades Council amounted to secondary picketing as defined and prohibited in Section 8B(4) of the National Labor Relations Act as amended and induced or encouraged Ledbetter Erection Company's employees to engage in a concerted refusal to perform services for the object of forcing or requiring another employer to recognize or bargain with the labor organization as the representative of Bear Brothers, Inc., employees, where such labor organization has not been certified as a representative of such employees and to force or to require Ledbetter Erection Company, Inc., to cease doing business with Bear Brothers, Inc.

The bill specifically alleged that if the picket line was maintained Ledbetter Erection Company would suffer irreparable damage for which it would have no adequate remedy at law; that the remedy of an action and damages provided by Section 303 of the Taft-Hartley Act (29 U.S.C.A., Section 187) was inadequate (R. 5). In addition to Complainant Ledbetter Erection Company's expensive machinery being kept idle its experienced workmen with whom it had a union contract had notified Ledbetter Erection Company that unless the picket line was removed that day, November 20, they would seek employment elsewhere and it might become necessary for Ledbetter Erection Company to default in its contract with Bear Brothers, Inc., and be subjected to suits for damages for such breach.

Upon consideration of this sworn bill of complaint alleging irreparable injury, in accordance with the Ala-

bama Practice a temporary writ of injunction was issued on the same day.**

The Trades Council originally filed an answer (R. 14-18) claiming that the erection of the building was entirely an intrastate job and the National Labor Relations Board have no jurisdiction thereof. Thereafter the Trades Council withdrew this answer and its motion to dissolve originally filed and moved to dissolve the injunction solely on its challenge to the jurisdiction of the state court (R. 19-21).

The motion to dissolve was submitted on affidavits appearing at Record pages 21 to 32. The affidavit of the Vice-President of Bear Brothers, Inc. (R. 22) showed that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; however, at no place was it made to appear by the affidavits of any of the parties thereto that the operations of Bear Brothers, Inc., and Ledbetter Erection Company combined would suffice to meet the established administrative standards of either a direct inflow of goods from out of state sources valued at \$500,000 per year or an indirect flow value at \$1,000,000 per year. No attempt was made by the Trades Council to present such facts sufficient to meet the administrative standards of the National Labor Relations Board for assuming jurisdiction. Were this case on final decree, we believe there would be a finding in the record that the amount involved was so small that the Board, for administrative reasons, would not take jurisdiction; and

**The printed transcript of the record and Petitioner's brief refers to the date of filing as October 20, 1950. Reference to the affidavits (R. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, shows that this is a typographical error for the affidavits of all parties show that the picket line was not established until November 1, 1950 and continued until November 20, 1950.

that, in addition a few weeks would probably elapse between the time of filing the complaint and filing the application of the National Labor Relations Board, to the Federal District Court for a restraining order; during which time Ledbetter Erection Company would be subjected to irreparable injury from the unlawful acts of the Trades Council.

SUMMARY OF ARGUMENT

The Congress did not intend to make of the Taft-Hartley Act a shield to protect unlawful conduct.

This Court has many times recognized the right of the States to set the limits of permissible contest open to industrial combatants.

International Brotherhood v. Hanke, 339 U.S. 469.

As part of this State power, the State courts have the right and the duty to protect citizens from irreparable injury from picketing for a purpose which is violative of the public policy of the State as established by its laws or court decisions.

Giboney v. Empire Storage and Ice Company,
336 U. S. 490;

Carpenters and Joiners Union v. Ritter's Cafe;
350 U. S. 722;

Hughes v. Superior Court;
339 U. S. 460.

Even prior to the Labor Management Relations Act of 1947, a secondary boycott was generally held to be against the public policy.

A secondary boycott was against the public policy of the State of Alabama as announced in its statutes.

To construe Federal legislation as not needlessly to forbid pre-existing State authority, is to respect our Federal system. Any indulgence in construction should be in favor of the States; and the intention of Congress to exclude the states from exercising their police power must be clearly manifested.

Allen Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740;

Dissenting opinion of Justice Frankfurter;

Bethlehem Steel Company v. New York State Labor Board, 330 U. S. 767, at 780;

Dissenting opinion, *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383.

The lawful rights of a citizen, whether arising from a legitimate exercise of a State or national power, unless excepted by express constitutional limitation, or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority state, or nation, creating them.

Minneapolis and St. Louis R. Co. v. Bombolis; 341 U. S. 211, 36 S. Ct. 595, 598;

Pennsylvania R. Co. v. Puritan Coal Co., 237 U. S. 121, 35 S. Ct. 484.

It is inconceivable that Congress intended by the Labor Management Relations Act, to protect an action characterized by the Congress as an unfair labor practice, by displacing pre-existing state authority in cases where for administrative reasons the National Labor

Relations Board did not act; and thereby to create a sanctuary to which the offending union might safely repair with complete immunity in violation of the public policy of both the state and the United States.

Oregon ex rel. Tidewater-Shaver Barge Lines v. Dobson, 30 LRRM 2345 (Oregon Sup. Ct. June 4, 1952)

ARGUMENT

Petitioners, throughout, have sought to make it appear that the sole basis for the application for a temporary injunction was the violation of the secondary boycott provisions of the Taft-Hartley Act which, according to Petitioners' brief "is not seriously controverted by Petitioners." (Brief Page 12). That is not correct. The bill of complaint specifically alleged that the Petitioners' conduct was in violation of the statutes of Alabama. The Supreme Court of Alabama, in its opinion, (R. 50) recognized this claim and stated: "We wish here to refer again to the principle that when a complainant comes into a court of equity seeking an injunction for the purpose of protecting a right, it is immaterial whether that right is one conferred by state or federal law *unless prohibited by federal law*. It is the existence of the right which is material and not the source of its enactment, provided the enacting power had due authority. But when a complainant comes into court it is not for him to choose whether his right is such as is conferred by the state or federal law. When properly analyzed his right is dependent upon whether the one or the other is there effective, and it is not open to him to make a selection, for only one law obtains to fix the status of a given situation. A person cannot legislate by choosing the applicable law."

This we submit was merely a recognition and restatement of the principles stated in the case of *Minneapolis and St. Louis R. R. Co. v. Bombolis*, 241 U. S. 211, where it is stated:

"that lawful rights of the citizen, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation, or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them."

Under the present state of the record, that is, without any final decree, without any finding of fact, and with full rights to the complainant below to amend the bill of complaint, the very grave issues of this case must necessarily be determined as a more or less abstract principle of law. There is no allegation in the bill that interstate commerce is or was affected by the work stoppage in question. It would be entirely proper for the complainant below to amend the bill of complaint and omit any reference to the secondary boycott provisions of the Taft-Hartley Act. It would be entirely proper for the complainant below to amend the bill of complaint and allege that, if interstate commerce is affected, under the present administrative regulations and statement of policy of the National Labor Relations Board, that Board would refuse to accept jurisdiction for administrative reasons, because of the small impact upon interstate commerce. However the same issue would still be before the court and that is, whether under any circumstances a state court can protect its citizens from irreparable injury by an act which is

characterized by the Taft-Hartley Act as an unfair labor practice; whether Congress, by so characterizing such act as an unfair labor practice meant to preempt the entire field to the exclusion of preexisting state authority. Were the bill so amended, this same issue would no doubt be raised by way of affirmative motion by the Trades Council, that interstate commerce was affected and the National Labor Relations Board had exclusive jurisdiction over such unfair labor practice.

This case we submit is merely another of the long series of cases requiring accommodation between the assertions of new federal authority and the functions of the individual states, so as to reflect the historic and persistent concerns of our dual system of government. We did not claim in the courts below, we do not now claim, that Section 8B(4) of the Labor Management Relations Act of 1947, vested in the individual or in the state any private right. Section 8B(4), established that a secondary boycott, generally held to be against the public policy of the individual state, was likewise against the public policy of the United States. It is the claim of the Petitioner that the effect of this was to preempt to the National Labor Relations Board, to the exclusion of the states, all control over such unlawful act. This argument of the petitioner, if sound, would necessarily require the holding that Congress likewise preempted to the National Labor Relations Board, to the exclusion of the states, all remedy against violence on the picket line which was likewise made an unfair labor practice by Section 8(b)(1) of the Act. We submit that a consideration of our dual system of government, a consideration of the laws that existed prior to the Labor Management Relations Act, and a consid-

eration of the drastic effects of such holding, require a different conclusion.

Many times, since the *Thornhill* case, this court has constantly reiterated and upheld "the power of a state to set the limits of permissible contest open to industrial combatant." As a necessary part of that state power, this court has many times upheld the right of the state court to enjoin peaceful picketing for a purpose which is against the policy of the state as established by its statutes or by its court decisions. In *Building Service Employees International Union v. Gazzam*, 339 U. S. 532, this court upheld an injunction by the state court of the State of Washington, enjoining picketing for the purpose of compelling the employer to coerce his employees to join the picketing union. The public policy of the State of Alabama as expressed in Title 26, Section 383, Code of Alabama of 1940, is almost identical with that of the Washington Statute involved in the *Gazzam* case, that every person shall be free to join or not to join any labor organization and shall be free from force, coercion or intimidation therein. The picketing in the instant case was carried on by the union for the purpose of preventing the union shop employees of Ledbetter Erection Company from performing their duty, and thereby to force Ledbetter Erection Company to put economic pressure on Bear Brothers, Inc., to coerce their non-union employees to join the Montgomery Building and Construction Trades Council. The purpose of the picketing here enjoined was therefore just as unlawful an attempt to coerce the employees of Bear Brothers, Inc. as was the purpose of the picketing in the *Gazzam* case; and unless that jurisdiction was superseded entirely by the Labor Management Relations Act of 1947, the injunc-

tion issued by the Alabama courts should be upheld just as was the Washington injunction in the *Gazzam* case.

In *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490, the union engaged in peaceful picketing for the purpose of compelling Empire Storage & Ice Company to stop selling ice to non-union peddlers. The Missouri Court held that such action would be in violation of the Missouri statute prohibiting combinations in restraint of trade, and issued an injunction against such picketing. This court in a unanimous opinion upheld this injunction. In the instant case the picketing was for the purpose of preventing Ledbetter from carrying on its lawful contract with Bear Brothers, Inc., and just as much in violation of Title 14, Section 54 of the Code of Alabama of 1940 as was the action enjoined in the *Giboney* case.

In the California case, *Hughes v. Superior Court*, 339 U. S. 460, this court upheld a decree of the State court enjoining picketing to accomplish a purpose which was against the public policy of California, although this public policy was expressed by the judicial organ of the state rather than by the legislature.

Unless, therefore, Congress intended to preempt the entire field of all labor relations where interstate commerce might be affected, no matter how slightly, the state court under these decisions had both the right and duty to protect its citizens from irreparable injury by picketing for a purpose contrary to the public policy of the state. We do not think it can be seriously controverted that a secondary boycott is contrary to the public policy of the State of Alabama. Practically every court which passed upon this question has declared secondary

boycotts to be unlawful, either upon the ground that they constitute unlawful coercions or upon the broad principle that one not a party to industrial strife cannot, against his will, be made an ally of one of the parties for the purpose of accomplishing the destruction of the other. 31 Am. Jur. 959 and numerous cases there cited. This was recognized by Senator Taft, sponsor of the Labor Management Relations Act who stated:

" . . . Under the provisions of the Norris La-Guardia Act, it became impossible to stop the secondary boycott or any other kind of strike, *no matter how unlawful it may have been at common law*. All this provision of the bill does is to reverse the effect of the law as to secondary boycotts." (93 Cong. Rec. 4198).

It was thereby recognized by Senator Taft that secondary boycotts were unlawful without any statute so providing.

In addition thereto, the statutes of Alabama have established a public policy of the State of Alabama as opposed to such picketing and boycotts. In fact the public policy of the State as expressed by its legislature went so far that two of the statutes were stricken down as unconstitutional, as going beyond the power of the state, to set the permissible limits open to industrial combatants.

We believe it would be helpful, in determining the public policy of the State of Alabama, to refer to its various statutes and the history thereof. As early as 1903 the Legislature of Alabama passed statutes making it a crime for any two or more persons to conspire together for the purpose of preventing any person from

carrying on any lawful business within the State of Alabama or for the purpose of interfering with the same. These statutes were carried forward into the Code of Alabama of 1907 as Chapter 176 "Boycotting and Blacklisting."

Shortly prior to 1921 the State of Alabama suffered from a disastrous coal strike. It was then discovered that the statutes relating to strikes and boycotts were inadequate so that the civil authorities were unable to prevent or check many of these wrongful acts. The Governor of Alabama called a special session of the Legislature of Alabama and one of the reasons of this special call was to strengthen the existing laws relating to boycotts. That portion of the Governor's message to the Legislature is included in the appendix of this brief.

Pursuant to the Governor's message, the Legislature of Alabama passed the Act approved October 29, 1921 (Acts of Special Session of 1921, Page 31 et seq.) This act is likewise included in the appendix to this brief and was carried forward into the Code of Alabama of 1923 as Chapter 91 "Boycotting and Blacklisting."

Section 1 of that Act which is still in effect and is now Title 14, Section 54 of the Code of Alabama of 1940, prohibited any two or more persons, without a just cause or legal excuse for so doing, from entering into any combination, conspiracy or understanding for the purpose of hindering, delaying or preventing any other persons from carrying on any lawful business. Section 2 of this Act established the public policy of the State as prohibiting loitering or picketing. This is the statute which this court held unconstitutional in the *Thornhill* case (310 U. S. 88, 84 L. ed. 1093) since

it was so broad that it would prohibit even peaceful picketing for a lawful purpose and therefore violated the constitutional prohibitions against free speech.

Section 4 of the Act of 1921, now Title 14, Section 57 and still in effect in Alabama, prohibited any person, firm, corporation or association of persons from using force, threats, intimidation, *or other unlawful means* to prevent any other person, firm or corporation from engaging in any lawful occupation or business. This statute is particularly pertinent since the union in this case concedes that it was using unlawful means to prevent Ledbetter Erection Company from carrying out its lawful contract with Bear Brothers, Inc.

In addition to the above statutes, in 1943 the Legislature of Alabama passed the Bradford Act, No. 298 Ala. Laws of 1943, (Code of 1940, Title 26, Section 376 et seq). That statute was construed by the Supreme Court of Alabama in the case of *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. 2d 810 and was before this court in the cases of *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450 and *Congress of Industrial Organization v. McAdory*, 325 U. S. 472. This Court declined to review the decision of the Alabama Court and declined to hold that there was any conflict between this statute and the National Labor Relations Act. There were two sections of the Bradford Act which are pertinent to this case. Section 8 of the Act codified as Title 26, Section 383 was almost identical with the Washington statute before this Court in the *Gazzam case* and guaranteed to every person the freedom to join or refrain from joining a labor organization. Section 12 of the Act was an effort to further strengthen the boycott provisions of the laws of Alabama by making it unlaw-

ful for any employee to refuse to handle, install, use or work on any particular material because not produced, processed or delivered by members of a labor organization. This statute, indicative of the legislative intent, was stricken down by the Supreme Court of Alabama since it made no reference to a conspiracy or to the concerted action of two or more persons and dealt solely with individual protests of the individual workman.

Under this long line of legislative history, we submit that it is plain that a secondary boycott is contrary to the public policy of the State of Alabama. Under the cases of this Court cited above, it is equally plain that, unless their authority has been completely superseded by the Labor Management Relations Act, the courts of the State of Alabama have the right to enjoin picketing to accomplish such a purpose, contrary to the public policy of the State. The one question therefore is whether by the Labor Management Relations Act of 1947, Congress intended to preempt this entire field to the National Labor Relations Board and to prohibit any action by the State under its police power against any acts characterized by the Congress as "unfair labor practice." Stated in other words, was it the intent of Congress to make of the Labor Management Relations Act a shield under which unions could engage in acts contrary to the public policy of both the state and the United States, free from any action by the state under its police power

We believe the answer to this question is found in the unanimous decision of this Court in *Allen-Bradley Local vs. Wisconsin Employment Relations Board*, 315 U. S. 740. The question there presented was whether an order of the Wisconsin Employment Relations Board entered under the Wisconsin Employment Peace

Act was void as repugnant to the provisions of the National Labor Relations Act. We recognize that in that case the court was construing the Labor Relations Act prior to the 1947 amendment, and that Act did not govern employee or union activity of the type there enjoined. Nevertheless the language of the court is equally apt here:

"Furthermore, this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested.' *Napier v. Atlantic Coast Line R. Co.* 272 US 605, 611, 71 L ed 432, 438, 47 S Ct 207, and cases cited; *Kelly v. Washington*, 302 US 1, 10, 82 L ed 3, 10, 58 S Ct 87; *South Carolina State Highway Dept. v. Barnwell Bros.* 303 US 177, 82 L ed 734, 58 S Ct 510; *H. P. Welch Co. v. New Hampshire*, 306 US 79, 85, 83 L ed 500, 505, 59 S Ct 438; *Maurer v. Hamilton*, 309 US 598, 614, 84 L ed 969, 980, 60 S Ct 726, 135 ALR 1347; *Watson v. Buck*, 313 US 387, 85 L ed 1416, 61 S Ct 962, 136 ALR 1426, *supra*. . . .

"If the order of the state Board affected the status of the employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long

obtained in this Court. See *Sinnot v. Davenport*, 22 How. (US) 227, 243, 16 L ed 243, 247.

"In sum, we cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired. Indeed if the portions of the state Act here invoked are invalid because they conflict with the federal Act, then so long as the federal Act is on the books it is difficult to see how any State could under any circumstances regulate picketing or disorder growing out of labor disputes of companies whose business affects interstate commerce."

Likewise if the power of the state to enjoin picketing for a purpose contrary to the public policy of the state, is superseded by the passage of the Taft-Hartley Act, then the power of the state, under its police power, to stop violence on the picket line is likewise superseded. Section 8(b)(1) makes coercion of employees an unfair labor practice and vests in the National Labor Relations Board just as much jurisdiction over such violence or coercion as is vested in them over secondary boycotting. Nevertheless, this Court in the case of *National Labor Relations Board vs. International Rice Milling Co.*, 341 U. S. 665, at 672 said this:

"In the instant case the violence on the picket line is not material. The complaint was not based upon that violence, as such. To reach it, the complaint more properly would have relied upon S

8(b) (1) (A) or would have addressed itself to local authorities."

We submit that that statement shows a recognition by this Court that the mere fact that an act was characterized as an unfair labor practice did not exclude action by the local authorities under their police power.

We believe the principle is well established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together." In *Kelly v. Washington*, 302 U. S. 9, 10, this Court speaking through Mr. Chief Justice Hughes, said:

"Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases* (*Simpson v. Shepard*) 230 U. S. 352, 402, 57 L. ed. 1511, 1542, 33 S. Ct. 729, 48 L.R.A. (N.S.) 1151, Ann. Cas. 1916A, 18. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible

is not forbidden or displaced. *The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'* *Sinnot v. Davenport*, 22 How. 227, 243, 16 L. ed. 243, 247; *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, 623, 624, 42 L. ed. 878, 881, 882, 18 S. Ct. 488; *Reid v. Colorado*, 187 U. S. 137, 148, 47 L. ed 108, 114, 23 S. Ct. 92; *Crossman v. Lurman*, 192 U. S. 189, 199, 200, 48 L. ed. 401, 405, 406, 24 S. Ct. 234; *Asbell v. Kansas*, 209 U. S. 251, 257, 258, 52 L. ed. 778, 781, 782, 28 S. Ct. 485, 14 Ann. Cas. 1101; *Missouri P. R. Co. v. Larabee Flour Mills Co.* 211 U. S. 612, 623, 53 L. ed. 352, 361, 29 S. Ct. 214; *Savage v. Jones*, 225 U. S. 501, 533, 56 L. ed. 1182, 1194, 32 S. Ct. 715; *Atlantic Coast Line v. Georgia*, 234 U. S. 280, 293, 294, 58 L. ed. 1312, 1318, 1319, 34 S. Ct. 829; *Carey v. South Dakota*, 250 U. S. 118, 122, 63 L. ed. 886, 888, 39 S. Ct. 403; *Atchinson, T. & S. F. R. Co. v. Railroad Commission*, 283 U. S. 380, 392, 393, 75 L. ed. 1128, 1136, 1137, 51 S. Ct. 553; *Mintz v. Baldwin*, 289 U. S. 346, 350, 77 L. ed. 1245, 1249, 53 S. Ct. 611; *Gilvary v. Cuyahoga Valley R. Co.* 292 U. S. 57, 78 L. ed. 1123, 54 S. Ct. 573, *supra*."

(Italics supplied).

In *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, at 253, the Court stated:

"However, as to coercive tactics in labor con-

troversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that 'the intention of Congress to exclude the States from exercising their police power must be clearly manifested.' *Allen-Bradley Local, U.E.R.M.W. v. Wisconsin Employment Relations Bd.* 315 US 740, 749, 750."

Again, in the case of *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 312, this Court reiterated the principle:

"... that in cases of concurrent power over commerce State law remains effective so long as Congress has not manifested an unambiguous purpose that it should be supplanted. See, e.g., *Sinnot v. Davenport*, 22 How. (US) 227, 16 L ed 243; *Missouri, K. & T. R. Co. v. Haber*, 169 US 613, 42 L ed 878, 18 S Ct 488."

Learned counsel for the Petitioner and for the National Labor Relations Board do not undertake to point out any respect in which there is a repugnance or conflict so "direct and positive" that the police power of the state cannot "be reconciled or consistently stand together" with action by the National Labor Relations Board. Brief Amicus Curiae on behalf of the Board (Brief Page 13) undertakes to point out two critical respects in which the action of the state court differs from the procedure set up by the National Act. These are that the private party applied directly to the Court instead of filing charges with the Board; and that application for injunctive relief was made to the state court instead of to the Federal court. We respectfully

submit that these are differences in procedure only with no difference whatever in the ultimate result. The relief granted by the State court was the identical relief which it was the duty of the National Labor Relations Board to secure at the hands of the District Court. We submit that the granting of the same relief at the hands of the State court is in no way a direct and positive repugnance or conflict with the securing of the identical relief by the National Labor Relations Board from the Federal Court.

It is argued by the Petitioner, however, that coincidence is as ineffective as opposition. We think this argument is fully answered by the majority opinion in *California v. Zook*, 336 U. S. 725, at 729:

"But respondents seize upon only one part of the familiar phrase in *Charleston & W. C. R. Co. v. Varnville Furniture Co.* 237 US 597, 604, 59 L ed 1137, 1140, 35 S Ct 715, Ann. Cas 1916D 333. We said that when 'Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition. . . ' See also, *Pennsylvania R. Co. v. Public Serv. Commission*, 250 US 566, 569, 63 L ed 1142, 1145, 40 S Ct 36, PUR 1920 A 909,; *Missouri P. R. Co. v. Porter*, 273 US 341, 346, 71 L ed 672, 675, 47 S Ct 383. Respondents' argument assumes the stated premise—that Congress has 'taken the particular subject matter in hand.' to the exclusion of state laws. The Court could not have intended to enunciate a mechanical rule, to be applied whatever the other circumstances indicating congressional intent.

"Coincidence is only one factor in a complicat-

ed pattern of facts guiding us to congressional intent. As the Court stated in the *Pennsylvania Railway Case* (250 US at 569, 63 L Ed 1145, 40 S Ct 36, PUR 1920A 909), the 'question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the State, must be answered by a judgment upon the particular case.' Statements concerning the 'exclusive jurisdiction' of Congress beg the only controversial question: whether Congress intended to make its jurisdiction exclusive."

In that case the Court reiterated that if the claim is conflict in terms, it must be clear that the federal provisions are inconsistent with those of the state and that congressional purpose to displace local laws must be clearly manifested. The Court further pointed out that it was difficult to believe that the Interstate Commerce Commission intended to deprive itself of effective aid from local officers experienced in the kind of enforcement necessary to combat the evil, aid of particular importance in view of the I. C. C.'s small staff. Likewise in this case it is difficult to believe that Congress intended to deprive the National Labor Relations Board from effective aid from local courts or police power; intended to place upon the National Labor Relations Board the entire burden of policing all actions arising in a labor dispute regardless of how small the impact upon interstate commerce. That is particularly true since the Board by its administrative regulations has recognized its inability to cope with such problems.

Petitioner in brief refers to the dissenting opinion of four members of this Court in the case of *California*

v. Zook, 336 U. S. 725. We might well refer to the dissenting opinion in *Bethlehem Steel Company v. N. Y. Labor Board*, 330 U. S. 767. As we understand the majority opinion in that case, it recognized the validity of the police power of the states in the interval pending minute and multitudinous administrative regulation of the subject delegated to the administrative tribunal. The majority opinion held, however, that failure of the Federal officials in that case to exercise their full authority took on the character of a ruling that no such regulation was appropriate. Even under the circumstances the dissenting opinion stated:

"Federal legislation of this character must be construed with due regard to accommodation between the assertions of new federal authority and the functions of the individual States, as reflecting the historic and persistent concerns of our dual system of government. Since Congress can, if it chooses, entirely displace the States to the full extent of the far-reaching Commerce Clause, Congress needs no help from generous judicial implications to achieve the supersession of State authority. To construe federal legislation so as not needlessly to forbid pre-existing State authority is to respect our federal system. Any indulgence in construction should be in favor of the States, because Congress can speak with drastic clarity whenever it chooses to assure full federal authority, completely displacing the States.

"This is an old problem and the considerations involved in its solution are commonplace. But results not always harmonious have from time to time been drawn from the same precepts. In law also the emphasis makes the song. It may make a

decisive difference what view judges have of the place of the States in our national life when they come to apply the governing principle that for an Act of Congress completely to displace a State law 'the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' *Sinnot v. Davenport*, 22 How (US) 227, 243, 16 L ed 243, 247. Congress can speak so unequivocally as to leave no doubt. But real controversies arise only when Congress has left the matter in doubt, and then the result depends on whether we require that actual conflict between State and federal action be shown, or whether argumentative conflict suffices."

Since Congress can state with decisive clarity, we look to the language of the act to see whether it was the intention of Congress to effectively tie the hands of local authorities in actions to prevent unfair labor practices. The language of the statute itself discloses no such congressional purpose. The Wagner Act specifically provided that the power of the Board to prevent any person from engaging in any unfair labor practice should be exclusive. This provision was entirely omitted from the Labor Management Relation Act and under the language of the Act this power of the Board is no longer exclusive.

Had Congress not deleted the word "exclusive," there would have been a plain congressional expression of an intent to preempt the entire field to the National Labor Relations Board. In the absence of such word, however, there is certainly no plainly expressed intent to accomplish the drastic innovation of a wholly new scheme of enforcement and to supersede the well es-

established authority of the State courts. To use the language of Judge Parker in the case of *Amazon Cotton Mill v. Textile Workers Union*, 167 Fed. (2d) 183:

"It is hardly thinkable that, if the effect of the Labor Management Relations Act was to make a fundamental change in the jurisdiction to deal with unfair labor practices, this important fact would not have dawned upon some member of the House or Senate or have been referred to in the course of the lengthy debate of a measure that was passed over a Presidential veto."

It is hardly thinkable that, if the effect of this Act was to supersede entirely the jurisdiction of the State courts as previously recognized by this Court in the *Gazzam case*, the *Hanke case*, and in *Hughes v. Superior Court*, that important fact would not have dawned upon some member of the House or Senate.

It is argued, however, that exclusion of state action may be implied from the nature of the legislation and that there might be a divergence between the action of the Board and the decision of a court. Insofar as the supersession of pre-existing state authority is concerned, however, it is well recognized that the exclusion of such state authority is not lightly to be inferred; that since Congress can, if it chooses, speak with clarity, all doubt should be resolved in favor of the pre-existing state power. There is, we submit, no direct conflict possible between the action of the State court and the action which the Board might take under the Taft-Hartley Act. If the Board, upon complaint and investigation finds that interstate commerce is not involved, it would take no action; and the affected party would be entirely free to secure the relief which was

here granted. If the Board found that interstate commerce was affected and that there was a secondary boycott, it would become the mandatory duty of the Board to apply to the United States District Court for the identical relief here granted by the State court. In the meantime, however, the union could continue the unfair labor practice. It could question, as it originally did in this case, whether interstate commerce was affected or whether there was solely an intrastate job. (R. 17) If the Board did apply to the District Court for a temporary restraining order, the union could contest before that Court, as it did in the *Denver case*, the question of whether interstate commerce was affected. *Sperry v. Denver Building and Construction Trades Council*, 77 Fed. Supp. 321. During that entire time, the innocent third party would be suffering irreparable injury by an act conceded to be contrary to the public policy of the state and conceded to be an unfair labor practice under the Taft-Hartley Act. It is hardly thinkable that, if this were the effect intended by the Congress, this important fact would not have dawned upon some member of the House or Senate.

If the Petitioner's theory of exclusive federal jurisdiction be adopted, Ledbetter Erection Company would have had no recourse but to stand idly by for an indeterminate period during the Board's investigation of its charge; and thereafter for a "few weeks" more while the Board decides whether or not to petition the United States District Court for a restraining order. Ledbetter Erection Company would have no recourse but to stand idly by while the union fought the jurisdiction of the Board, both before the Board and before the District Court as it did in the *Denver case*. Meanwhile Ledbetter would be suffering irreparable injury

through the idleness of its equipment, the loss of its employees protected by a union shop contract, and the forfeiture of its contract with Bear Brothers, Inc. and the risk of being subjected to damages therefor. As was stated by the Supreme Court of Oregon in the case of *State ex rel Tidewater-Shaver Barge Line v. Dobson*, 30 LRRM 2345 (Oregon Supreme Court, June 4, 1953) 22 Labor Cases, Par. 67, 081:

"We are unable to believe that the Congress ever intended that such an intolerable situation should exist without remedy. To hold otherwise would give such recognition to a legislative hiatus between federal and state law that would thereby create a sort of judicial island in our national life untouched by either Congressional or state statute, a sanctuary to which the offending unions might safely repair with complete immunity while holding and harassing plaintiff and its business, or vice versa, a haven of protection wherein the employer might find refuge to unjustly and illegally exploit his employees to their detriment or labor organizations to their destruction. Such is not consonant with the public policy of any state so far as we are advised, nor have we discovered any federal sanctions for such a practice. When any group, whether it be one of employer or employees, can find such a refuge beyond the reach of judicial control, we jeopardize our fundamental concepts of law and order and lay the foundation for privileged classes, inimical to the most cherished ideas of equal justice for all."

"When the National Labor Relations Board is impotent by its own confession to implement immediate aid, then we believe it is appropriate and

necessary that our courts of equity take jurisdiction and apply such remedies as a hearing on the facts seems to dictate."

"The idea is not novel. It finds recognition and approval in principle in *Bethlehem Steel Co. et al. v. New York State Labor Relations Board*, 330 U. S. 767, 773, 91 L. ed. 1234, 67 Sup. Ct. 1026, where it is said:

"In other cases, Congress has passed statutes which initiate regulation of certain activities, but where effective regulation must wait upon the issuance of rules by an administrative body. In the interval before those rules are established, this Court has usually held that the police power of the state may be exercised. . . ."

"We are unable to discover any persuasive distinction between an administrative body whose functions are rendered dormant by reason of its failure to issue implementing rules and regulations and an administrative body whose emergency functions are rendered impotent by causes unknown, particularly when declared in terms of delay which would defeat the remedies sought to be achieved through the agency confessing its own functional paralysis."

The instant case is much stronger than the case presented to the Oregon Supreme Court there. In that case, there was no question of the jurisdiction of the National Labor Relations Board or of that Board refusing jurisdiction for administrative reasons. In this case, the right of the Board to take jurisdiction has been upheld by this Court in the Denver case, the Chattanooga


case, and the Greenwich case.* But under the current practice, as reflected by the release of National Labor Relations Board dated October 6, 1950, entitled, "NLRB Clarifies and Defines Areas in Which it Will and Will Not Exercise Jurisdiction"; and as reflected in the brief filed Amicus Curiae on behalf of the Board (Brief p. 44) the Board for administrative reasons will not assert jurisdiction over an enterprise where it does not have (1), a direct inflow of goods from out of State sources valued at \$500,000 a year; or (2), an indirect inflow valued at \$1,000,000.00 a year. Since neither Ledbetter nor Bear Brothers have any outflow of material, the balance of the administrative regulation is immaterial. We are therefore faced with a situation where the Board for administrative reasons would not accept jurisdiction to stop the admitted unfair labor practice. Prior to the passage of the Taft-Hartley Act, the State courts had the right to enjoin practices which were contrary to the public policy of the State. We respectfully submit that it was not the intention of Congress to supersede this pre-existing State authority and to make of the Taft-Hartley Act a shield or an island of refuge under which any person, union, or otherwise, could engage unhindered in acts contrary to the public policy of the State and of the United States.

*National Labor Relations Board v. Denver Building and Construction Trades Council, 341 U. S. 675; International Brotherhood of Electrical Workers v. National Labor Relations Board, 341 U. S. 694; and Local 74, United Brotherhood of Carpenters and Joiners of America v. National Labor Relations Board, 341 U. S. 707.

CONCLUSION

We respectfully submit that the decision of the Supreme Court of Alabama is absolutely correct. The amended act did not by its terms confer any power upon the State Court; but it did not express a plain and unequivocal intent to supersede the pre-existing State authority.

Respectfully submitted,


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APPENDIX A

Title 26, Section 383, Code of Alabama of 1940:

"§ 383. FREEDOM TO JOIN OR REFRAIN FROM JOINING LABOR ORGANIZATION.—Every person shall be free to join or to refrain from joining any labor organization except as otherwise provided in section 391 of this title, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family. (1943, p. 256, § 8, appvd. June 29, 1943.)"

Title 26, Section 387, Code of Alabama of 1940:

"§ 387. REFUSAL OF EMPLOYEE TO USE, ETC., NON-UNION-MADE MATERIALS, ETC.—It shall be unlawful in and about the business of an employer, for an employee to refuse to handle, install, use or work on any particular materials, equipment or supplies because not produced, processed or delivered by members of a labor organization. Provided, however, nothing herein shall be construed to prevent employers and labor organizations from contracting in writing for the use solely of union-made materials, equipment or supplies. (1943, p. 256 § 12, appvd. June 29, 1943.)"

Title 14, Section 54, Code of Alabama of 1940:

"§ 54. CONSPIRACY, COMBINATION OR AGREEMENT TO INTERFERE WITH OR HINDER BUSINESS, UNLAWFUL.—Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agree-

ment, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporations, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Title 14, Section 57, Code of Alabama of 1940:

"§ USING FORCE OR THREATS AGAINST PERSON ENGAGING IN LAWFUL OCCUPATION.—Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other person, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor."

CODE OF ALABAMA OF 1907—CHAPTER 176

BOYCOTTING AND BLACKLISTING

§ 6394-6399

Section.	Section.
6394. Boyc ot t i n g or conspiracy to prevent or interfere with lawful business.	6397. Force, threats, or intimidation.
6395. Unlawful to interfere with trading by others.	6398. Maintaining blacklist unlawful.
6396. Unlawful to blacklist, or circulate notice of blacklist.	6399. Penalty for violating provisions of chapter.

6394. **BOYCOTTING OR CONSPIRACY TO PREVENT OR INTERFERE WITH LAWFUL BUSINESS.**—Any two or more persons who conspire together for the purpose of preventing any person, persons, firm, or corporation from carrying on any lawful business within the State of Alabama, or for the purpose of interfering with the same, shall be guilty of a misdemeanor.

6395. **UNLAWFUL TO INTERFERE WITH TRADING BY OTHERS.**—Any person or persons who go near to or loiter about the premises or place of business of any person, firm, or corporation engaged in a lawful business, for the purpose of influencing or inducing others not to trade with, buy from, sell to, or have business dealings with such person, firm, or corporation, or to picket the works or place of business of such other person, firm, or corporation for the purpose of interfering with or injuring any lawful business or enterprise, shall be guilty of a misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business.

6396. **UNLAWFUL TO BLACKLIST, OR CIRCULATE NOTICE OF BLACKLIST.**—Any person who prints or circulates any notice of boycott, boycott cards, stickers, dodgers, or unfair list, publishing or declaring that a boycott or ban exists or has existed or is contemplated against any person, firm, or corporation doing a lawful business or publishing the name of any judicial officer or other public official upon any blacklist, unfair list, or other similar list because of any lawful act or decision of such official, shall be guilty of a misdemeanor.

6397. **FORCE, THREATS, OR INTIMIDA-**

TION.—Any person who uses force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation at any place he or she sees fit, shall be guilty of a misdemeanor.

6398. MAINTAINING BLACKLIST UNLAWFUL.—Any person, firm, or corporation who maintains a blacklist or notifies any other firm, or corporation that any person has been blacklisted by such person, firm or corporation, or who uses any other similar means to prevent such persons from receiving employment, shall be guilty of a misdemeanor.

6399. PENALTY FOR VIOLATING PROVISIONS OF CHAPTER.—Any person, firm, or corporation violating any section of this chapter must, on conviction, pay a fine of not less than fifty dollars nor more than five hundred dollars, or be imprisoned not to exceed sixty days' hard labor for the county.

GOVERNOR'S MESSAGE TO SPECIAL SESSION OF LEGISLATURE OF OCTOBER 4, 1921

(General Laws of 1921, Page XXII)

BOYCOTTS, BLACKLISTING, ETC.

The recent coal strike in this State developed the fact that our civil and criminal statutes were inadequate to promptly and properly deal with the conditions which existed just prior to and after the strike was declared. It was then discovered that by reason of the inadequacy of the statutes of this State, relating to strikes, boycotts, blacklisting, etc., that the civil authorities were unable to prevent or even check many wrongful acts which inevitably led to the calling of the strike and to the perpetration of many heinous crimes which attended and followed the strike. Acts

of violence and commission of more serious crimes against both person and property of citizens, the inability of the civil authorities to check or control such unlawful actions on the part of those connected or sympathizing with the strikers necessitated calling out the State militia to preserve peace and order in the coal mining districts of the State. While martial law was not absolutely declared, nor the civil law actually suspended, the condition of affairs was so critical and so serious that at times it appeared almost imperative that martial law should be declared in the coal mining districts of the State. The only justifiable cause for calling out the military forces of the State or Nation is the inability of the civil authorities or inadequacy of the civil or criminal laws to so deal with the situation or condition as to secure peace and good order. If the statutes of the State had been adequate and the civil authorities had been able to promptly and properly deal with the conditions in the incipency of the labor trouble in the mining districts, much, if not all, of the great loss of life, property, and the incurring of enormous expenses of the State could have been avoided.

I, therefore, request that the statutes be amended and revised, so as to promptly and properly deal with such situation, if it should again occur.

With some few exceptions and limitations not necessary to here point out, the following I conceive to be well recognized, if not universal, maxims as to the inalienable rights of American citizens.

First, ^{or} Every citizen has the inalienable right to work or not to work; to work for whomsoever he pleases, and at whatsoever price or on whatsoever terms he pleases, provided his employer agrees to his terms.

Second. Every citizen has the inalienable right to employ or refuse to employ whomsoever he pleases, and to employ them at whatsoever price or on whatsoever terms he pleases, provided his employees agree to his terms.

Third. No man has the right to say to another: "You shall work," or "You shall not work;" or that "You shall work for this man, but not for that one;" or that "You shall work at this price, but not for that price;" or that "You shall work upon these conditions, but shall not work upon those conditions."

That ancient maxim—"So use your own as not to injure another's property"—should apply to the right to labor as well as that of property, the mere fruits of labor. The statutes of this State insofar as they can be made to do so ought to expressly declare, preserve, and guarantee the above as well as the other inalienable rights of citizens of this State.

Such conditions as existed in the coal mining districts of this State, under the leadership of irresponsible foreign agitators, if not the result or product of socialism, certainly tend to encourage or promote socialism, which often results in anarchy. Socialism is the sower of the seeds, and anarchy is the reaper of treason against the government. A conspiracy to injure the public, or the practice of acts and the teachings of doctrines with the intent or purpose, or the natural or probable result of which is to injure the public, was a crime at common law, and ought to be so declared by statute, with appropriate penalties. A conspiracy to starve or freeze the public, or even an agreement to do acts, the natural and probable result of which is to cause great suffering or inconvenience to the public, is little less

than treason against the government, when the government is like ours—nothing but the public or the people.

GENERAL LAWS OF ALABAMA OF 1921

Page 31.

ACT No. 23

To amend and revise Chapter 176 of the Code, which Chapter is entitled "Boycotting and Blacklisting."

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

That Chapter 176 of the Criminal Code of Alabama, entitled "Boycotting and Blacklisting," be amended and revised so as to read as follows:

Section 1. Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firm, corporation, or association of persons from carrying on any lawful business shall be guilty of a misdemeanor.

Section 2. Any person or persons who, without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any other person, firm, corporation, or association of people, engaged in a lawful business, for the purpose, or with the intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purposes of hindering,

delaying or interfering with, or injuring any lawful business or enterprise of another, shall be guilty of a misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business.

Section 3. Any person, firm, corporation, or association of persons who prints or circulates any notice of boycott, boycott cards, stickers, dodgers, or unfair lists, publishing or declaring that a boycott or ban exists or has existed or is contemplated against any person, firm, corporation, or association of persons doing a lawful business, shall be guilty of a misdemeanor.

Section 4. Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other persons, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor.

Section 5. Any person, firm, corporation, or association of persons who maintains what is commonly called a blacklist or notifies any other person, firm, corporation, or association that any person has been blacklisted by such person, firm, corporation, or association; or who uses any other similar means to prevent any person from receiving employment from whomsoever he desires to be employed by shall be guilty of a misdemeanor.

Section 6. Any person, firm, corporation or association of persons who without a just cause or legal excuse willfully or wantonly does not act with the intent, or with reason to believe that such act will injure, interfere with, hinder, delay or obstruct any lawful business or enterprise in which persons are employed

for wages; or who shall willfully or wantonly injure, destroy; attempt to destroy, or threaten to injure or destroy any property of another; or who shall willfully or wantonly derange, or attempt or threaten to derange any mechanics, appliances or devices, of another used in any lawful business or enterprise, shall be guilty of a misdemeanor.

Section 7. Any person, firm, corporation, or association of persons who without a just cause or legal excuse, but with the intent to supplant, nullify, or impair, the owner's, operator's or manager's control of any lawful business, or enterprise, or who without just cause or legal excuse, shall take, retain, attempt or threaten to take, or retain, possession or control of any property of another or any instrumentality used in any lawful business or enterprise of another shall be guilty of a misdemeanor.

Section 8. Any person, firm, corporation or association of persons, who, without a just cause or legal excuse shall advise, encourage, or teach the necessity, duty, propriety, or expediency of doing or practicing any of the acts or things made unlawful by this act; or who print, publish, audit, issue, or knowingly circulate, distribute, or display any book, pamphlet, paper, handbill, document, or written or printed matter of any form advertising, advising, teaching, or encouraging such necessity, duty, propriety, or expediency of violating or disregarding any of the provisions of this act; or who organizes or helps to organize, gives aid or comfort to, or becomes a member of any group of persons formed to advocate, advise, or teach the necessity, duty, propriety, or expediency of violating or disregarding any of the provisions of this act shall be guilty of a misdemeanor.

Section 9. Any person, firm, corporation, or association of persons violating any of the preceding sections or provisions of this act shall on conviction be punished by a fine of not less than one hundred dollars (\$100.00) or more than one thousand (\$1,000.00), and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 6 months for the first conviction at the discretion of the court or judge trying the case; and on the second and every subsequent conviction in addition to the fine which may be imposed, the convicted party shall be sentenced to hard labor for not less than three months nor more than 6 months to be fixed by the judge or court trying the case.

Section 10. The provisions of this act shall take effect immediately upon its approval by the Governor.

Approved October 29, 1921.

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IN THE

Supreme Court of the United States

October Term, 1952

MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, ET AL., *Petitioners*

vs.

LEDBETTER ERECTION COMPANY, INC.

BRIEF FOR THE
CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE

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CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS *AMICUS CURIAE***

CONSENT TO FILE

This brief *amicus curiae* is submitted by the Congress of Industrial Organizations with the consent of the parties, as provided for in Rule 27 of the rules of this Court. The interest of the CIO in this case, involving as it does the possible subjection of every CIO local and international union to injunctive proceedings in the courts of the 48 states, is obvious.

THE DECISION BELOW

In this case it may be as important to understand what the issues are as it is to discuss their resolution. The petitioner and the National Labor Relations Board argue the case, in their briefs, as if the question were whether a state court is given authority by the National Labor Relations Act, as

amended, to enforce the unfair labor practices provisions of that Act by way of injunction. The respondent, on the other hand, in its brief in opposition, seemed to take the position that the question was whether the State of Alabama could enjoin practices which it found to be illegal under state law even though they were also violations of the National Labor Relations Act.

Resolution of this apparent controversy as to the issue presented here necessarily must depend upon analysis of the opinion of the Supreme Court of Alabama. That opinion is not, of course, conclusive as to the scope of the federal questions involved. It is, however, conclusive as to the matters of state law which are involved, or may be involved. The Supreme Court of Alabama can be reversed by this Court with respect to federal questions. It cannot be reversed with regard to its findings as to what is involved in the case under the law of Alabama.

It is, therefore, important to determine exactly what the Supreme Court of Alabama did hold. There is language in its opinion that, at first glance, seems to look both ways. The Court clearly said that the question before it was whether the employer could obtain protection from the state courts of "a right which the Labor-Management Act has conferred upon him." (R. 51) It also said, however, that the employer's contention, which it upheld, was that the federal Act was not exclusive but left intact the traditional state remedies which "otherwise existed in the equity courts." (R. 48) The contention was, the court said, not that the amended federal Act granted power to the State court but that it removed the impediment contained in the original Act to the exercise of an existing remedy. It was pursuant to this line of argument that the court distinguished *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 Fed. 2d 183 (C. A. 4, 1948). In the *Amazon* case, the Alabama court said, the question was whether the amended Act gave a remedy to private parties in the federal courts. In this case, the question was whether the Act prevented the use of a previously existing remedy in the state courts. (R. 47-48)

The explanation of this apparent contradiction lies in the

distinction made by the Alabama court between the substantive right and the procedural remedy. Whether we agree that this distinction has validity or not, the Alabama court has apparently declared that the two are to be treated entirely separately and independently. The court decided these questions of right and remedy independently of each other, and the result the court reached is based as much upon this separation itself as it is upon the resolution of the issues separated.

Remedy: The Alabama court started with the assumption that the state courts had, prior to the enactment of the federal Act, the traditional power of courts of equity to enjoin unlawful picketing. This remedy was treated as entirely independent of whatever substantive law might make the picketing unlawful. It was said to rest "without other grant" (R. 49) on section 144 of the Constitution of Alabama.

The first question treated by the Alabama court was whether this pre-existing remedy "was taken away" (R. 46) by virtue of the provisions of the Wagner Act making Board jurisdiction over unfair labor practices exclusive. The court concluded that the federal Act had, indeed, barred the state from utilizing this pre-existing remedy.

This being so, the second question before the Supreme Court of Alabama was whether this "impediment in the use of the remedy then existing in a state court" (R. 46), which it held that the Wagner Act had created, was removed in turn by the Taft-Hartley Act. The court concluded that the change in the wording of Section 10(a) and the elimination of the word "exclusive" restored the pre-existing state jurisdiction. In the words of the Court "the Labor-Management Act . . . merely serves to eliminate that feature of the original Act which excluded all courts from exercising injunctive jurisdiction . . ." (R. 49)

It is important to keep in mind that this question of remedy was treated by the Alabama court entirely independently of the source of the right sought to be enforced. The fact that, before the Wagner Act was passed, the substantive right to be enforced was a state right while, after the Taft-Hartley Act removed the "impediment" to injunctive jurisdiction, the right to be enforced might be a federal right, was irrelevant

to the Alabama court's view. Indeed, the fact that there was no substantive federal law with respect to union unfair labor practices until the Taft-Hartley Act was passed seems not to have affected the court's reasoning as to the effect of the Wagner Act on the pre-existing state remedy. Looking only to the remedy—and not to the right—it found that a remedy existed before the Wagner Act, was taken away by the jurisdictional provisions of that Act, and restored by the amendment to the Act.

Substantive Right: The Alabama court did not discuss extensively the question of substantive right: i.e., the question of whether federal or state law, or both, could be relied upon to show the illegality of the union activity sought to be enjoined. This was natural, in view of the court's division of the issues between remedy and substance. There was no dispute, it said, about the substantive illegality of the activity. Whether the law confining the illegality was state or federal, or both, was logical, immaterial since the question of remedy was treated by the court independently from the question of substance. As the court itself said (R. 50), "it is immaterial whether [the] right is one conferred by state or federal law unless prohibited by federal law. It is the existence of the right which is material, and not the source of its enactment"

Although the Alabama court did not, therefore, regard itself as being required to decide whether federal or state law, or both, could be relied upon to show the illegality of the picketing sought to be enjoined, it is quite clear that it regarded the Federal law as both controlling and exclusive. Indeed, it treated the complaint as alleging *only* a violation of federal law (R. 41-42) and it ignored entirely any claim of violation of state law.

The only real discussion of the question of substantive law occurred in the court's discussion of *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, on pp. 50-51 of the record. "It is clear," the court said, "that in respect to commerce the Federal Congress has legislated defining unfair labor practices by labor organizations as well as by employers, and such definition supersedes any state legislation doing so." The *Amalgamated* case proves that. "It does fix

the status of unfair labor practices to the exclusion of state laws in respect to commerce. . . . We have here a federal law defining unfair labor practices in commerce, which takes precedence over any state law in that respect." But the only question in this case, according to the court, concerned remedy, not substance. The *Amalgamated* case, the *O'Brien* case (339 U. S. 454) and similar cases were, therefore, deemed irrelevant.

Conclusion: The Alabama court's conclusions rested directly on the reasoning summarized above. The picketing complained of was unlawful—whether by virtue of federal or state law being immaterial, although the court recognized that it was actually unlawful exclusively by virtue of federal law. The equity courts of Alabama had a pre-existing jurisdictional right to enjoin unlawful acts. This jurisdiction was taken away by the Wagner Act and restored by the Taft-Hartley Act. Hence, the courts of Alabama now had jurisdiction to issue the injunction prayed for.

The apparent conflict between the Alabama court's discussion of pre-existing—and hence, state rights—and rights conferred by the federal Act disappears as a result of this analysis. The court did not rest its conclusion on the existence of any substantive rights under state law. Indeed, it assumed that none existed, that the Taft-Hartley Act had pre-empted the field. The court's reference to the pre-existing law of Alabama was a reference to the injunctive powers of the Alabama courts, nothing more.

THE ISSUE BEFORE THIS COURT

It hardly requires a Hohfeld to recognize that there is something wrong with the reasoning of the Alabama court. The question actually asked by it, as to the existence or non-existence of a disembodied remedy, floating through the air without any connection with the right being enforced, cannot be sensibly answered because it is a nonsense question. The federal issues necessarily posed by the case must, therefore, be re-formulated by this Court. The state questions, however, cannot be so re-formulated, since this Court must take the law of Alabama as given by the decision of the Supreme Court of Alabama.

Two possible federal questions were raised by the pleadings in this case: 1) Can the Alabama state courts issue injunctions to enforce compliance by a union with the provisions of the Taft-Hartley Act?; 2) Can the Alabama courts issue injunctions against union conduct which is alleged to violate the Taft-Hartley Act, but which same conduct, for the very same reasons, violates a similar law or the policy of the State of Alabama?

The first question is clearly presented by the express allegation in paragraph 11 of the complaint that the union's action "is a violation of Section 8B(4) of the National Labor Relations Act as amended" (R. 5), by the allegation in paragraph 12 that the remedy under the federal Act is inadequate (R. 5) and by the prayer of the complainant for an order enjoining the union from "Engaging in any unfair labor practice as defined by the Labor-Management Relations Act" (R. 8).

The second question appears to be presented by the allegations in paragraph 15 of the complaint that the conduct complained of was: (a) a violation of Section 54, Title 14 of the Code of Alabama of 1950 (R. 7) in that it constituted a conspiracy for the purpose of hindering complainant from carrying on a lawful business (R. 7); (b) in violation of Section 57 of the same title because the picketing was unlawful under federal law (R. 7); (c) in violation of complainant's property rights (R. 8); and (d) unlawful interference with the right of complainant's employees to work (R. 8). No additional specific relief was requested, however, with regard to the alleged violations of state law. The complainant's prayer for relief was capable of resting entirely on the claimed violations of Federal law and the injunction granted by the trial court (R. 10-11) was in the precise terms of the prayer for relief (R. 8-9).

Although this second issue could have been decided by the Supreme Court of Alabama on the record before it, it was not so decided. The Alabama court ignored the allegations that state law had been violated. It said (R. 41) that "the allegations of the bill itself show that reliance is had upon the National Labor Relations Act as amended, for the purpose of determining whether or not the complainant is entitled to an

injunction," and it treated the case throughout as if no other allegations had been made.

In this posture, we think that the second question—whether Alabama could enjoin violations of its own law covering the same subject matter as the federal law—is not necessarily before this Court. The Alabama court treated the claim of violation of state law as non-existent and, on such matters, its decision is final. The only question which this Court has to decide, therefore, is the first question: whether the Alabama courts constitute a permissible agency for enforcement of the Taft-Hartley Act.

DISCUSSION

1. It is not the purpose of this brief to repeat arguments already made by the parties and by the National Labor Relations Board. And the notion that the Congress intended to entrust to the courts of the 48 states the power to enforce the Taft-Hartley Act is so repugnant to the text, the philosophy and the legislative history of that Act that further argument against it seems superfluous.

There is, however, one additional point which we would like to make, because it bears strongly upon the practical effect of the Court's decision in this case. The question whether the state courts may enjoin violations of the Taft-Hartley Act carries a somewhat different connotation when it is remembered that an affirmative answer means that those courts may issue such injunctions against alleged violations of the Act without notice or hearing; that such *ex parte* orders, under the practice of many states, carry no automatic expiration date or requirement that a hearing be promptly held on a motion to dissolve; and that, in the interim, substantial rights to participate in concerted activities, guaranteed by the Act, may be irreparably damaged without any possibility of relief. Unfair labor practice charges can be brought against a company that interferes with the legitimate concerted activities of its employees. They cannot be brought against a state court which accomplishes the same interference by an *ex parte* injunction based on untested, and often unfounded, claims that such activities violate the Act.

The difference between enforcement of the Taft-Hartley Act by the National Labor Relations Board, on the one hand, and by the state courts, on the other, is not adequately described by terming it simply a difference between administrative and judicial enforcement. It actually represents the difference between enforcement by an uninformed authority, on a bare claim of violation, without hearing or notice and prior to any determination of the facts or the law, and enforcement after at least a preliminary investigation by an impartial body familiar with the law involved. A strike enjoined is often a strike broken. Whether the strike was rightly or wrongly thus broken is often immaterial. The damage has been done and there is no redress. To authorize the courts of the 48 states to enjoin strikes because of claimed violations of federal law would authorize an unprecedented expansion in the business of strike breaking by preliminary injunction. We think that it cannot sensibly be argued that such a result was intended by Congress.

2. Exactly the same considerations, of course, are pertinent to what we have termed the second question: whether Alabama may enforce by injunction its own law or policy against the alleged unfair labor practices here involved.

As stated above, we do not believe that this question is necessarily before the Court, since the complaint here has been treated by the Alabama Supreme Court as alleging only a violation of the federal Act. But if, contrary to our belief, this Court feels it necessary or advisable to pass upon this second question, we respectfully submit that its answer must be the same as its answer to the first question. Independent regulation by the states of unfair labor practices, particularly where that regulation is by *ex parte* court order, carries exactly the same possibility of conflict with the Federal scheme of regulation as does enforcement by the states of the federal Act.

This Court has already decided, in *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953, that a state may not duplicate the unfair labor practice provisions of the federal act and enforce its own parallel provisions through the state's administrative agency. The possibilities of conflict in the type of statute involved in *Plankinton* are

as nothing compared to the possibilities inherent in state legislation which permits the kind of *ex parte* injunction issued in this case. It is not enough to say that the ultimate resolution of the controversy under a state statute must accord with the governing federal law so that activities protected by the federal law are not restricted. Unless it is clearly said, as this Court indeed has said, that "Congress occupied this field and closed it to state regulation" (*Automobile Workers v. O'Brien*, 339 U. S. 454, 457), thus barring *ab initio* the use of the state's injunctive power, the very real possibility exists that activities which the federal Act protects will be forbidden by the states, at least until the state court has had the opportunity to pass upon the merits. And this type of temporary action, reversed although it ultimately may be, involves just as great a conflict, indeed, perhaps a greater conflict, than enforcement through an administrative agency of a parallel state labor relations statute.

Respectfully submitted,

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